

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

18 JUNE 2019

DAY 114

20

PROCEEDINGS ON 18 JUNE 2019

CHAIRPERSON: Good morning Ms Hofmeyr, good morning everybody.

ADV KATE HOFMEYR: Morning Chair.

CHAIRPERSON: Thank you. Are you ready?

ADV KATE HOFMEYR: We are indeed.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Thank you Chair. During the course of today the intention is to receive evidence from two witnesses, Ms Nhantsi and Mr Mahlangu they are both present. They are also legally
10 represented so I would like to take a moment if I may to allow their legal representatives to place themselves on record.

CHAIRPERSON: Thank you. Let them do so.

ADV SANDANATHI GWINA: Thank you Mr Commissioner my name Sandanathi Gwina from Gwina Attorneys I act for Mr Mahlangu.

CHAIRPERSON: Thank you very much Mr Gwina.

ADV NOSANDISO SOVITI ZWEDALA: Thank you Mr Commissioner my name is Advocate Nosandiso Soviti Zwedala I act on behalf of Phumeza Nhantsi.

CHAIRPERSON: Thank you very much.

20 **ADV NOSANDISO SOVITI ZWEDALA**: Thank you very much.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Chair there are a few procedural aspects just to deal with in advance of the witness being sworn in if I may.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: The first of those just relate to the time frames within which we have received the statements of the witnesses you will hear from today. Ms Nhantsi's statement was received in enough time to follow the Rule 3.3 processes and so those have been followed in relation to her statement. Insofar as Mr Mahlangu is concerned his statement was received on Friday afternoon.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: That is just before the long weekend. The
10 consequence of that is that it has not yet been possible.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: To follow a Rule 3.3 process in relation to Mr Mahlangu.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: But we have a proposal in that regard Chair.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: The first point to note is that almost all of the persons who are implicated at all on the basis of the statement of Mr Mahlangu have been previously implicated in the evidence of Ms
20 Stimpel and Ms Nhantsi so they have received notification.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: In relation to the facts of this evidence.

CHAIRPERSON: Hm

ADV KATE HOFMEYR: And in many respects overlap with the respects in which they are referenced in Mr Mahlangu's statement. Chair the

second point we wish to make in relation to that procedural aspect is that it would be our proposal in relation to Mr Mahlangu's evidence that it be received today and that if in due course it becomes necessary to issue 3.10 or Regulation 10.6 Directives arising from his evidence that will then be a process that can be followed by the commission if there are particular aspects of his evidence which require the commission to know what the version is of other persons in relation to that evidence. What I can state on record though is that those persons who have already received 3.3 Notices in relation to Ms Nhantsi and Ms Stimpel's

10 evidence have not applied to cross-examine bar the two applications that you have already been alerted to Chair that is the application from Mr Zwane to cross-examine Ms Stimpel as well as Ms Nhatsi to cross-examine Ms Stimpel but we have already dealt with the process in relation to that aspect. So Chair that is our proposal for the way forward today but of course we seek your direction in that regard.

CHAIRPERSON: Well obviously from what you have said there is no problem arising from Ms Nhantsi's one but there are concerns in regard to Mr Mahlangu. When I read Mr Mahlangu's statement – well I did not have information as to whether the Rule 3.3 Notices had been sent out

20 or not and when they had been sent out but I had a concern as to whether some of the issues that appear to be in dispute between himself and Ms Stimpel whether they might not have been resolved if there had been time for Ms Stimpel to look at Ms Mahlangu's statement and apply her mind to certain issues because of them may be – might be based on some misunderstanding just so that we know what is really

seriously contested between the two of them. I had that concern so one there is that concern and two while there may be – it might be an important factor in terms of what is to be done that the persons that he may be implicating are persons who have been implicated by other witnesses and they have not applied for leave to cross-examine. We have to con – we have to always keep our eyes on consistency.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: Last week when Mr Nxasana was testifying counsel for Ms Jiba approached the court and expressed Ms Jiba's concern that
 10 she had not been served with a 3.3.Notice. And the result was that I decided that the evidence that would implicate Ms Jiba and others in matters that were not already in the public domain in the sense of being in affidavits in matters that are pending in court or that have already been decided in court or in judgments should not be covered until at a later stage. Now in doing so a very important factor in my mind was the fact that Ms Jiba has apparently not been notified at all of not notified in time even of the fact that there was a witness who was going to be giving evidence and implicating her. And that thinking was in this context that

20 1. The Rule 3.3. process contemplates that if a person is going to be implicated or is implicated in a statement or in evidence to be given by a witness that person must be given a Rule 3.3 Notice that tell him or her of that fact or possibility and it gives that person – it also tells that person that he or she may attend the proceedings on the date when that witness give evidence or have

counsel and that he or she may apply for leave to cross-examine the witness or to lead evidence himself or herself or to call witnesses.

Now there is a provision in the – in that Rule 3.3 Notice which says: If an implicated person or a person who has been served with a Rule 3.3 Notice believes that the time that has been afforded him or her before the witness comes before the commission to give evidence is inadequate then they may apply to the commission for such relief as may be necessary to ensure that they are not seriously prejudiced.

- 10 Now the way that things have happened since August has been such that no witness has been cross-examined on the same day that they give evidence so arrangements have to be made all the time and persons who need to apply for leave to cross-examine have had ample time – have been given ample time to make that application and so on. But what has happened is that sometimes the Rule 3.3 Notices have been served on implicated persons in circumstances where those persons will not get 14 days within which to apply and – but where nevertheless they received the Rule 3.3 Notices and therefore they know that they will be implicated by somebody they know when that
- 20 person will be giving evidence. One of the factors that has weighed with me is that at least they were aware that somebody is going to give evidence and implicating them. They were aware in advance. They could come and sit and hear and listen. They could brief counsel, instructing attorney to come and sit and listen. At least they will not be – they will not have a situation where they may be driving and find that

on the new, on radio they hear somebody is implicating them of something and they had no idea whatsoever. So part of the concern last week with regard to the matter relating to Ms Jiba was that as I understood the position she had not even been alerted that somebody will be giving evidence. Now coming then to Mr Mahlangu's situation it seems that except for one issue his situation may be in the same position as that of Ms Jiba. The one issue which might distinguish the two is that as you say the persons that Mr Mahlangu implicates are persons who have been implicated by other witnesses and therefore
10 have been – or are aware of allegations against them having been made. So that is that. But I still remain concerned if they are not aware even by way of a phone call that somebody will be giving evidence and maybe somebody different may be giving evidence. So I am concerned about that and the other – the other matter that I raised namely to what extent we should have a situation where the other persons who have given evidence or is it one – oh it is two I think, who have given evidence if they get to see Mr Mahlangu's statement and maybe somebody in the legal team takes them through to see in regard to which issues maybe there could be common ground. You know
20 sometimes you say one thing and then somebody brings in a different perspective and you see it from a different angle you say okay now I understand that and then – so that we can remain with only those that are seriously contested. So those are my concerns. I do not know what you might have to say?

ADV KATE HOFMEYR: Chair if I may address each of the issues that

you have raised? If we can start with the question of the witnesses who have already testified who may be referenced in the Mr Mahlangu's statements. Chair it is unfortunate that the statement was only received last Friday. There had been detailed engagements with Mr Mahlangu in advance of that and this point in particular was put to Mr Mahlangu because the disadvantage if we got it later than the evidence of Ms Stimpel and Mr Van Der Merwe was precisely that we would not be able to put contrary version to him. So that – that certainly was made known. Insofar as how to manage it however Chair it is our
10 submission that certainly in relation to Ms Stimpel I will check again before Mr Mahlangu's evidence but I do not regard anything that he says about the processes in SAA requiring her response. Mr ...

CHAIRPERSON: At least I see she is here I think.

ADV KATE HOFMEYR: Indeed she is so that – she can also indicate to us in due course.

CHAIRPERSON: Ja at least she is attending.

ADV KATE HOFMEYR: She is attending.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Indeed.

20 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: Mr Van Der Merwe is different. There is a – there is a contrary version in relation to some aspects of what Mr Van Der Merwe said and there are also one or two pieces of correspondence. You will recall in the course of Mr Van Der Merwe's testimony we asked him if he could go back and check his records for

correspondence.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: He undertook to do so but we have now found another source.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Of some of that correspondence.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: It is certainly our suggestion in that regard that after Mr Mahlangu's evidence we engage again with Mr Van Der Merwe.

10 We put those documents to him and we ask him for an account. At that stage on affidavit so we can assess it and if necessary there can be a recall of witnesses.

CHAIRPERSON: Yes, yes.

ADV KATE HOFMEYR: But certainly that aspect

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: The fact that Mr Mahlangu's evidence is coming later than those two witnesses it is our submission that there is a process.

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR**: By which that can be dealt with.

CHAIRPERSON: Yes, yes.

ADV KATE HOFMEYR: Chair if I may then go to the question of Mr Maglangu's evidence today?

CHAIRPERSON: Yes. Let me – let me just make sure I understand with regard to Mr Van Der Merwe?

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Mr Mahlangu's statement you say does implicate him?

ADV KATE HOFMEYR: It ...

CHAIRPERSON: Or may implicate him?

ADV KATE HOFMEYR: It gives a version

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: At least in relation to certain interactions.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Between Grissag AG and BNP.

10 **CHAIRPERSON:** YEs.

ADV KATE HOFMEYR: Which were not able to be put to Mr Van Der Merwe.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: So his account of whether indeed certain meetings that are referred to in the correspondence did or did not take place.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: That has – that has not been put to Mr Van Der Merwe because that information came to us on Friday.

20 **CHAIRPERSON:** Yes, yes.

ADV KATE HOFMEYR: So he would – it is not so much implication.

CHAIRPERSON: Yes it is a response.

ADV KATE HOFMEYR: As response and getting to the truth.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And the facts

CHAIRPERSON: Yes,

ADV KATE HOFMEYR: About what happened at the time.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: We would need his account.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: For what Mr Mahlangu traverses.

CHAIRPERSON: Yes. So it is a response to what...

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: To what Mr Van Der Merwe may have said.

10 **ADV KATE HOFMEYR:** Indeed, indeed.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Mr Mahlangu received Mr Van Der Merwe's statement in advance

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Of him providing his statement.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: So he was able to respond to it.

CHAIRPERSON: Yes, yes

ADV KATE HOFMEYR: Provide further insight.

20 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: And documents which were not previously in the commission's possession.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But that came in literally

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: While Mr Van Der Merwe was giving the evidence on Friday.

CHAIRPERSON: Yes, yes.

ADV KATE HOFMEYR: So our suggestion there is that we will need to ask for Mr Van Der Merwe's response

CHAIRPERSON: Ja, yes.

ADV KATE HOFMEYR: To the extent that that applies to Ms Stimpel similarly.

CHAIRPERSON: Yes.

10 **ADV KATE HOFMEYR:** And then we can make an assessment about whether further oral testimony is required at all.

CHAIRPERSON: So what is your submission on whether in regard to that Mr Mahlangu – Mr Maglangu should cover that today or should leave it for later?

ADV KATE HOFMEYR: He may leave it for later.

CHAIRPERSON: What – because he would come back – he may have to come back anyway.

ADV KATE HOFMEYR: Indeed. That is certainly something that we can do.

20 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: In relation to that aspect.

CHAIRPERSON: Yes

ADV KATE HOFMEYR: We could carve out – it is a fairly small respect in which he references Mr Van Der Merwe.

CHAIRPERSON: You have – you have a better idea of how serious an

implication it is.

ADV KATE HOFMEYR: No it is a point of discrepancy.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: In relation to certain facts.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: But in the scheme of Mr Mahlangu's evidence they are fairly minoe.

CHAIRPERSON: Yes, yes, yes. Okay. Well in relation to Mr Mahlangu – Mr Van Der Merwe

10 1. You say Mr Mahlangu's statement is a response to...

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Mr Van Der Merwe's statement.

ADV KATE HOFMEYR: Yes it is.

CHAIRPERSON: Ja. That is 1.

2. You say it is really a minor kind of discrepancy in their versions.

ADV KATE HOFMEYR: As I read his statement.

CHAIRPERSON: As you understand it.

ADV KATE HOFMEYR: Okay. Indeed.

CHAIRPERSON: Yes. And – and is it but one issue?

20 **ADV KATE HOFMEYR**: It is...

CHAIRPERSON: One or two issues? One or two issues?

ADV KATE HOFMEYR: It is – only one or two and it is principally about engagements between Grissag

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And BNP Capital.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Who those engagements were with. You will recall part of Mr Van Der Merwe's evidence was he could not recall.

CHAIRPERSON: Yes, yes.

ADV KATE HOFMEYR: Who he was speaking to any point in time.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: What Mr Mahlangu has provided us with is some correspondence.

CHAIRPERSON: Yes.

10 **ADV KATE HOFMEYR:** Between Mr Mgadi.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And Mr Van Der Merwe.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Mr Mgadi is somebody who will feature in the evidence today both of Ms Nhantsi and Mr Mahlangu.

CHAIRPERSON: Yes. Yes.

ADV KATE HOFMEYR: So it is of that order.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Chair.

20 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: And then it is a few details about meetings that were going to be arranged.

CHAIRPERSON: Yes

ADV KATE HOFMEYR: After the date of the 8th June.

CHAIRPERSON: Yes

ADV KATE HOFMEYR: Mr Van Der Merwe's evidence really stopped on the 8th June. That is when he attended at SAA and that term sheet was signed.

CHAIRPERSON: Yes

ADV KATE HOFMEYR: But Mr Mahlangu's evidence tends to indicate that there may have been later interactions.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And so that would need to be probed with Mr Van Der Merwe.

10 **CHAIRPERSON:** Yes. But...

ADV KATE HOFMEYR: That is the gist of it.

CHAIRPERSON: But – but the implication might be nothing more than there is a different version.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: That Mr Van Der Merwe's evidence might not have been true.

ADV KATE HOFMEYR: Yes or accurate in some respects.

CHAIRPERSON: Not – or accurate.

ADV KATE HOFMEYR: Indeed.

20 **CHAIRPERSON:** Nothing more than that.

CHAIRPERSON: Not as I read the statement.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: If Mr Mahlangu thinks that there is more

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: In the implication he can tell us.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But certainly as I have read it those are the issues of discrepancy in versions.

CHAIRPERSON: Yes, yes.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: And well with regard to Mr Stimpel I think that can be sorted out.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Because she is here.

- 10 **ADV KATE HOFMEYR**: Yes it can. The principle issue there again as I read the statement relates to the question of the success fee that was going to be made paid to be BNP had they successfully sourced the funds. That is an issue that was extensively dealt with by Mr Stimpel because Ms Nhantsi has a contrary version on that. And so that issue has been debated but again Ms Stimpel is here and if there is need for response we can – we can certainly pursue that.

CHAIRPERSON: Now this regard to Mr Mahlangu's evidence in relation to Ms Stimpel I think I can allow that because obviously Ms Stimpel is aware that Mr Mahlangu is giving evidence today.

- 20 **ADV KATE HOFMEYR**: Yes.

CHAIRPERSON: She is here. So that concern which I talked about is taken care of. And with regard to Mr Van Der Merwe you say this is a response to his own statement.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: And that – and that is also a factor. But let us see

how we deal with it. Maybe that on your feet you might just have to exercise your mind about cover it or not covering it.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Until he comes back but there is something to be said if it is a response. It is just a different version.

ADV KATE HOFMEYR: It is indeed.

CHAIRPERSON: Ja, ja so – so let us proceed and you can exercise your discretion as to whether to – you want to ask if I – if in the process ...

10 **ADV KATE HOFMEYR**: Yes indeed.

CHAIRPERSON: I think we should exclude it I will let you know.

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: But the fact that it is a response to Mr Van Der Merwe's statement and it is a minor issue at least as you see it is an important factor.

ADV KATE HOFMEYR: I am indebted to you Chair for that direction I will bear it mind.

CHAIRPERSON: Ja.

20 **ADV KATE HOFMEYR**: If I can then deal with the question of Mr Mahlangu's evidence and implicated persons potential and the approach there. Chair as I have it there are really three reasons why Rule 3.3 Notices are given. They are given to alert witnesses that they are to be implicated – at least persons that they are to be implicated in evidence. It is to give them an opportunity to attend and to make application to cross-examine. Those are really as I see it the three

principle reasons. I would like to address each of them and submit to you Chair that those are not compromised if we were to proceed with Mr Mahlangu's evidence today. The reason for that is the following:

The People who are principally implicated in Mr Mahlangu's evidence have previously received Rule 3.3 Notices. The consequence of that is that they knew evidence relating to these matters commenced on Thursday last week through the evidence of Ms Stimpel and then Mr Van Der Merwe. In the course of that hearing last week Chair there was mention made on a number of occasions that Mr Mahlangu would

10 be testifying today that was specifically reference I think in the course of Friday's hearing. So anyone who had been alerted to Ms Stimpel's evidence would be aware and were watching Ms Stimpel's evidence would be aware that Mr Mahlangu was testifying today. Of course at the point that that statement was made it was because Mr Mahlangu had been summonsed. We still were not in receipt of the statement. But that fact has been publicly made known. Chair the second aspect is in the world of technological advance the right to be present in this room is not as critical as it might otherwise be. Chair as you well know these proceedings are video-taped, they are available on line. The
20 transcript goes up the next day and so the ability to understand the evidence that is given is not as critically needed to be complied with.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: By presence in the room.

CHAIRPERSON: Yes, yes.

ADV KATE HOFMEYR: And Chair insofar as....And Chair insofar as...

CHAIRPERSON: I think – I think the – the – once the person is aware that somebody will be giving evidence on a certain date implicating them I think that is the most critical.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Because even if you might not be able to attend – if you are aware you might be able to have access to the proceedings in other ways.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: But of course as one says that one has to bear in
10 mind that there are still lots of people who might not have access to ...

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: To a lot of things that others have.

ADV KATE HOFMEYR: Agreed Chair.

CHAIRPERSON: But – but in all probability the people we are talking about here do not fall into that category. But...

ADV KATE HOFMEYR: Certainly...

CHAIRPERSON: We just have to keep that you know in the back of our minds. Ja.

ADV KATE HOFMEYR: Chair if I may make a proposal in that regard?
20 Because you reference particularly the possibility of at least a telephone call to alert persons. Mr Mahlangu is not due to testify first today. Ms Nhantsi will and she will take some portion of the day. In that regard my suggestion is that we take steps during the course of this morning to notify the persons. There are persons for whom the commission has got contact details because they have been previous

recipients of earlier Rule 3.3 Notices and with your leave I suggest we make those attempts and I can report back to you at an appropriate time as to the success of that notification. But my principle submission is that those recipients of previous 3.3 Notices know that this evidence was starting last week. Know that Mr Mahlangu was coming. The only question would be well they even know that he was coming today so that – they would be aware of that fact as well Chair. But to the extent that you deem it necessary we can make endeavours to make that contact in the course of the morning.

- 10 **CHAIRPERSON**: No that – that is fine. I think for what it is worth let those endeavours be made but from what you say it does appear that it is a matter where we can proceed.

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: Ja hm.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: But I am not cutting you short.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: No certainly.

- 20 **CHAIRPERSON**: Okay.

ADV KATE HOFMEYR: Chair thank you. Chair then just in relation to one or two other procedural matters. There are a few documents that have been handed up this morning to me by Ms Nhantsi in relation to her testimony and one additional document in relation to Mr Mahlangu's. I beg leave at the appropriate point to hand those up to

you Chair. There is also a question in relation to documents that Mr Mahlangu received over the weekend from the commission which were relevant after we had received the statement. There is an aspect there I have dealt with his legal representative and him about that this morning and I will place that on record but I propose to do that just in advance of Mr Mahlangu's evidence and not at the outset now if that is convenient Chair.

CHAIRPERSON: Hm. No that is fine. There is a person that Mr Mahlangu mentions frequently in his statement that appears to have
10 played quite an important role in his company.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: In regard to BNP and SAA.

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: Do you know whether that one is aware that Mr Mahlangu will be giving evidence? They were working on the same side.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: During those...

ADV KATE HOFMEYR: Chair he received notice of Ms Nhantsi's
20 evidence.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Has received the full statement and annexures.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Of Ms Nhantsi's evidence

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: He features prominently in her evidence.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: He would also had he been – he was also implicated in Ms Stimpel's evidence ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And so – no I – I stand corrected there. He was not implicated in Ms Stimpel's evidence but he did receive ...

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: But he did received notification of Ms Nhantsi's
10 evidence ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And so to the extent that he was taking note of the proceedings last week. He would have been alerted to Mr Mahlangu's appearance ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But insofar as those calls will be made ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: My suggestion is that we start with them ...

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** This morning.

CHAIRPERSON: Yes, yes. Of course Mr Mahlangu's statement suggests that he was the one who wrote letters and ...

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Did – played a certain role.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: There maybe – there may be room for interpretation that Mr Mahlangu is not necessarily saying he was involved ...

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: In anything ...

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: Wrong ...

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: But he is saying to the extent that he may have been involved in anything wrong Mr Mahlangu was unaware ...

10 **ADV KATE HOFMEYR:** Hm.

CHAIRPERSON: Of it.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: So I think maybe he must be one of those who must be notified.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: *Ja*.

ADV KATE HOFMEYR: Chair we will take those steps and I will report back in due course.

CHAIRPERSON: *Ja*, okay thank you.

20 **ADV KATE HOFMEYR:** Thank you.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: If I may just take a moment.

CHAIRPERSON: *Ja*.

ADV KATE HOFMEYR: Thank you Chair. Chair if I may then ask for Ms Nhantsi to be sworn in.

CHAIRPERSON: Yes. Please administer the oath or affirmation.

REGISTRAR: Please state your full name for the record.

MS PHUMEZA NHANTSI: Phumeza Nhantsi.

REGISTRAR: Do you have any objections to taking the prescribed oath?

MS PHUMEZA NHANTSI: I do not have any objections.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MS PHUMEZA NHANTSI: Yes.

10 **REGISTRAR:** Do you solemnly swear that all the evidence that you will give will be the truth, the whole truth and nothing but the truth if so please raise your right hand and say so help me God.

MS PHUMEZA NHANTSI: So help me God.

MS PHUMEZA NHANTSI: (duly sworn, states)

REGISTRAR: Thank you.

CHAIRPERSON: Thank you. You may proceed.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Hm.

20 **ADV KATE HOFMEYR:** Ms Nhantsi just in relation to some housekeeping matters you have before you a file which contains your statement, annexures and additional documents which you have previously been provided with. Chair for the purposes of the record may I request that this be marked EXHIBIT DD2 as is referenced on the spine of the file?

CHAIRPERSON: The lever arch file containing Ms Nhantsi's statement

will be marked EXHIBIT DD2.

ADV KATE HOFMEYR: Chair there will also be cause in the course of Ms Nhantsi's evidence to refer to one or two aspects of the statement of Mr Mahlangu and so for record purposes if we could just enter that in as EXHIBIT DD4 as is referenced on the spine.

CHAIRPERSON: The lever arch file containing Mr Pholisani Daniel Mahlangu is to be marked EXHIBIT DD4.

ADV KATE HOFMEYR: Thank you Chair and Ms Nhantsi just to orientate you – you have a box of files next to you. Those contain the
10 bundles of witness statements and evidence other than your own. At appropriate points I will ask you to – to take them out and I may refer you to aspects of them.

Just to orientate you. Ms Stimpel's statement is represented over three files. They are called DD1A, B and C. So I will make that reference to you to know which file to look at – at any point and then you have just been alerted to the fact that Mr Mahlangu's exhibit will be DD4. If you have any concerns let us know in the course of the evidence.

Ms Nhantsi if we could then go to your statement which is in
20 EXHIBIT DD2 and if you turn to page 1 of that statement – at least that bundle. That is the first page of the statement as I have it and then if you turn on page 23 that is the last page as I have it. Can you confirm that that is your signature appearing on that page?

MS PHUMEZA NHANTSI: Yes Chair I can confirm that it is my signature.

ADV KATE HOFMEYR: Ms Nhantsi I know that you want to make one correction in relation to your statement which I will allow you an opportunity now to do. I then will ask you after that correction is made whether you confirm the correctness of the facts as they are set out in the statement.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: so if we could begin with the correction.

MS PHUMEZA NHANTSI: Yes Chair. Thank you Chair. The correction which I will apologise is the spelling of Ms Stimpel. It is supposed to
10 be M-P-E-L instead of Stipel. I apologise for that. I do have a second correction Chair but I am trying to orientate myself with your version of – of the statement especially with the pagination. Just give me one second. There is a – there is a correction that I want to make.

ADV KATE HOFMEYR: Certainly.

MS PHUMEZA NHANTSI: Thank you Chair. On my statement it is PN014. It is in paragraph 49 Chair. The sentence starts with:

“I had discussed my concerns about the
cancellation fee with other ...”

CHAIRPERSON: I am – I am sorry. Did you say paragraph 49?

20 **MS PHUMEZA NHANTSI:** Paragraph 49 Chair yes.

CHAIRPERSON: That is not on my page 4.

ADV KATE HOFMEYR: 14 Chair, 1-4.

MS PHUMEZA NHANTSI: It is page 1-4.

CHAIRPERSON: 1-4?

MS PHUMEZA NHANTSI: Sorry, 1-4 yes.

CHAIRPERSON: Oh.

MS PHUMEZA NHANTSI: Apologies Chair.

CHAIRPERSON: Thank you, yes.

MS PHUMEZA NHANTSI: Yes. The sentence starts with:

“I had discussed my concerns about the
cancellation fee with other two Board Members:
Ms Yakhe Kwinana and Dr Tambi. In return they
voted against the cancellation.”

I would like to make a correction there. They abstained. They did not
10 vote against. Thank you Chair. Those are the corrections that I
wanted to make.

ADV KATE HOFMEYR: Thank you Ms Nhantsi. One other point I – I
should just make clear. The paragraph numbers on your statement
were in fact - other than paragraph 1 and two - were added by the
Commission after receipt of your statement because we had to have a
way to navigate within it particularly for the purpose of Rule 3.3
Notices. I – I take it you do not take issue with that?

MS PHUMEZA NHANTSI: No. I do not.

ADV KATE HOFMEYR: Thank you.

20 **CHAIRPERSON:** Well I see that at the end of your statement at page
23 after signing you said yours faithfully.

MS PHUMEZA NHANTSI: Chair ...

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: Because I am not legally acute I am not –
was - I supposed to say yours sincerely.

CHAIRPERSON: No not – not really. It is just that it is a statement and not a letter.

MS PHUMEZA NHANTSI: Oh.

CHAIRPERSON: So I was wondering.

MS PHUMEZA NHANTSI: Apologise Chair. I am an accountant.

CHAIRPERSON: You are an accountant?

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: *Ja*.

MS PHUMEZA NHANTSI: Yes.

10 **CHAIRPERSON:** *Ja*, okay. No, no I mean there is no issue. It just caught my – my eye.

MS PHUMEZA NHANTSI: Okay Chair.

CHAIRPERSON: Okay.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Thank you Chair. Ms Nhantsi I would like to just begin with for record purposes noting that you have made an application to cross-examine Ms Stimpel. That will be dealt with in due course by the Chair. Did you have an opportunity to watch or otherwise follow the evidence of Ms Stimpel and Ms – Mr van der Merwe last
20 week?

MS PHUMEZA NHANTSI: Yes. Through you Chair yes I did have an opportunity to watch both Ms Stimpel and Mr van der Merwe.

ADV KATE HOFMEYR: Thank you. That is just helpful for me to know because I can make reference then to some of the aspects of what was covered in that testimony. I would like to begin Ms Nhantsi with really

your start at SAA and for that purpose if we could turn to page 2 of your statement and pick it up at the start of that page. It is the second part of paragraph 4 which begins on the previous page because there I have it that you commenced at SAA on 27 November 2015. Is that correct?

MS PHUMEZA NHANTSI: Yes it is correct Chair.

ADV KATE HOFMEYR: Can you tell us about how you came to be appointed at SAA on that date?

MS PHUMEZA NHANTSI: Yes Chair. I was – I am Phumeza Nhantsi. A
10 qualified chartered accountant. I was working at Sizwe Ntsaluba Gobodo. It is the accounting firm. I had an audit that I was doing – the joint audit – in fact it was subcontracting with Kwinana & Associates Denel. So Sizwe Ntsaluba Gobodo was the – the main auditors.

That is how I knew Ms Kwinana. One of the days she asked me that if I would be interested in aviation because I do have experience in aviation as I was auditing Denel. I said it would be a nice experience to explore the corporate world and – but she told me that they need to follow the – the process as the Board because my predecessor – Mr Wolf – left the company. They are looking for
20 secondment at the time.

She then engaged with the CEO of SNG. His name is Victor Sekese. One of the days later in the year – I think early - November I was called by Mr Sekese my CEO to ask if I would be interested. There is an opportunity for secondment. I said yes. Whilst I was happy with working at SNG I also wanted – I was curious in

wanting to explore the corporate world. So I said yes.

My understanding and based on the bundle that I saw there were three CVs that were sent to SAA and my – my CV was selected and I was then called by CEO Victor - Mr Sekese – to come and sign the Secondment Agreement which made me to then start at SAA on 27 November 2015.

ADV KATE HOFMEYR: And you occupied an Interim CFO position. Is that correct?

MS PHUMEZA NHANTSI: At the time yes. I was the Interim CFO but I
10 was a secondee because I was still paid by SNG. There was an agreement between SNG and SAA on the payment arrangements.

ADV KATE HOFMEYR: And when did your status change from Interim CFO?

MS PHUMEZA NHANTSI: My status changed effective 1 May 2017. There was a recruitment process that was done by the – the company and the Board at the time. If my memory serves me right the – the headhunter agents that they used were Mindcor. I applied like any other candidate and I then qualified. I was told that I am the one who – who was suitable and who won the position. So I then became
20 permanent CFO effective the 1st - 1 May 2017.

ADV KATE HOFMEYR: So would it be correct that until that point you were in the secondment position and your title was Interim CFO?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Thank you. Ms Nhantsi you referenced the fact that you are a qualified chartered accountant. That is also apparent

from your statement on page 2. Ms Nhantsi I take it then that you would have a good understanding of the fiduciary duties of Directors to companies on which they serve. Is that correct?

MS PHUMEZA NHANTSI: Yes it is correct Chair.

ADV KATE HOFMEYR: What do you understand those fiduciary duties to comprise?

MS PHUMEZA NHANTSI: I do not know them off by head Chair but one of them is I am responsible for the company to safeguard the assets of the company and to act in the best interest of the company. The others
10 I would have to refer Chair.

ADV KATE HOFMEYR: Indeed. For present purposes the ones I would like to focus on are:

“Acting in the best interest of the company.”

So can I understand it that you would have understood at the time and do now that that is a key requirement of a Director?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: The other one taken from Section 76.3 of the Companies Act is:

“To act in good faith and for a proper purpose.”

20 Would you accept that those are duties and you would have been aware of those at the time that you took up the CFO position?

MS PHUMEZA NHANTSI: Yes I was aware Chair.

ADV KATE HOFMEYR: Thank you. Ms Nhantsi your statement also indicates that you – you understood the processes of procurement by State Owned Enterprises. Is that correct? Is that a fair statement for

me to make?

MS PHUMEZA NHANTSI: It is. I fairly understood them.

ADV KATE HOFMEYR: And was it part of your understanding that the general position for state owned companies when they procure services is that they must do so pursuant to an open and competitive tender process?

MS PHUMEZA NHANTSI: Yes Chair. When it is practicable to do so yes.

ADV KATE HOFMEYR: Indeed and so I take it to also have been part
10 of your understanding that there might be exceptional circumstances where that is not possible. Is that right?

MS PHUMEZA NHANTSI: Yes, yes Chair.

ADV KATE HOFMEYR: But those would have to be justified. Correct?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: And they would have to be justified within the system that has developed within that company for departures from the default position. Correct?

MS PHUMEZA NHANTSI: Fully agree Chair.

ADV KATE HOFMEYR: Thank you. I would then like to move
20 Ms Nhantsi to Mr Masotsha Mngadi.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Because he is a person who features prominently in your statement and I would like to just get some understanding of your interactions with him, when they commenced, how you came to interact with him. If we can start with when they

commenced. You indicate in your statement and we can go to page 12 for this at paragraph 40.

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: You say in the course of that paragraph right at the bottom of the page. You say there:

10 “Immediately when I joined SAA the Chairperson of the Board gave me Mr Mngadi’s numbers and told me that he is an advisor and also if I have any questions in the submissions that I was busy with for the swap deal I should contact him. He was also given my number by the Chairperson of the Board because he contacted me.”

So can we take it that that occurred shortly after 27 November 2015?

MS PHUMEZA NHANTSI: Yes Chair. I can confirm. If I am not mistaken I am sure it happened two days after I had joined. The Chair of the Board – Ms Myeni – gave me the number of Mr Mngadi. At the time that I joined SAA the – the Board and Executives were busy with the correspondence between the Minister at the time about the swap deal.

20 So I did not even have a clue of the swap deal but there was a letter that was needed to be prepared as a response to the – to the Minister of Finance. So in preparation for that together with the Acting CEO Ms Myeni gave me the numbers of Mr Mngadi saying Mr Mngadi is his advisor. He is fully aware of the transaction.

If I have any questions or after I have drafted the letter I can

touch base with him. He knows the – the transaction. So before I could contact him he contacted me. Hence I am saying Ms Myeni gave him my number.

ADV KATE HOFMEYR: Indeed and can I take it that you saved those details into your phone at the time shortly after you arrived at SAA?

MS PHUMEZA NHANTSI: Yes. I saved them Chair.

CHAIRPERSON: And did Mr Mngadi contact you on your cellphone as opposed to the work landline?

MS PHUMEZA NHANTSI: He contacted me on my cellphone Chair.

10 **CHAIRPERSON:** Oh. So that is why you say it would have been Ms Myeni who would have given him your cell number?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And that would be the phone that you saved his details into. Is that correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Thank you.

MS PHUMEZA NHANTSI: So that is – perhaps to conclude that is the first time that ...

20 **ADV KATE HOFMEYR:** Hm.

MS PHUMEZA NHANTSI: I started engaging with him. I did not know him before.

ADV KATE HOFMEYR: And you – you referenced that he was an advisor. Had he been appointed through a procurement process into that role?

MS PHUMEZA NHANTSI: I did not ask that question to – to Ms Myeni at the time. I took it the process was done before my time.

ADV KATE HOFMEYR: Did you ever make inquiries about that?

MS PHUMEZA NHANTSI: I made inquiries through you Chair and I then realised or concluded that he is – Mr Mngadi is his personal advisor because when I made inquiries to Ms - Ms Kwinana she told me that it is – it is Ms Myeni's person and because I was making inquiries because there was also another person who was the advisor who was Mr (indistinct) Nel and I understood that he was appointed through a
10 process.

So I was curious to understand how Mr Mngadi was then appointed. So Ms Kwinana told me that it is – it is Ms Myeni's person.

ADV KATE HOFMEYR: Can I just clarify? Does that suggest that there was not then a formal process to appoint Mr Mngadi?

MS PHUMEZA NHANTSI: That ...

ADV KATE HOFMEYR: That he was there simply as an advisor that Ms Myeni utilised?

MS PHUMEZA NHANTSI: That was my understanding Chair.

ADV KATE HOFMEYR: And when about did you make that inquiry?

20 **MS PHUMEZA NHANTSI:** Beginning of January.

ADV KATE HOFMEYR: Of 2016?

MS PHUMEZA NHANTSI: Sorry, sorry. I started 27 November. I made that mid of December.

ADV KATE HOFMEYR: Right.

CHAIRPERSON: You – you say that you were told that Mr Mngadi is

his personal advisor. You mean Ms Myeni's personal advisor?

MS PHUMEZA NHANTSI: That is what ...

CHAIRPERSON: Is that what – what you were told?

MS PHUMEZA NHANTSI: Yes Chair. That is what ...

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: Ms Kwinana told me.

CHAIRPERSON: Okay. So as distinct from being an advisor to the company?

MS PHUMEZA NHANTSI: To the Board.

10 **CHAIRPERSON:** To the Board?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Okay. Would you know whether the – what you were being told was that Mr Mngadi was Ms Myeni's advisor in her capacity as Chairman of the Board as opposed to maybe to being advisor to the Board or that he was Ms Myeni's personal advisor in whatever matters that the two of them decided he would advise her?

MS PHUMEZA NHANTSI: Chair ...

CHAIRPERSON: Or is that something you did not understand?

MS PHUMEZA NHANTSI: How I understood it ...

20 **CHAIRPERSON:** Hm.

MS PHUMEZA NHANTSI: Is because with the engagements that I had with Mr Mngadi he knew a lot about SAA ...

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: But I would not say he was – perhaps he was his personal because he was not paid via a payroll of SAA.

CHAIRPERSON: Oh.

MS PHUMEZA NHANTSI: So hence I am saying ...

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: I think Mr Mngadi was his ...

CHAIRPERSON: Was her personal advisor?

MS PHUMEZA NHANTSI: Was her personal – yes Chair.

CHAIRPERSON: Okay, alright and that – and that he was not paid through SAA – that is Mr Mngadi – is something you would know of course because you were the Interim CFO?

10 **MS PHUMEZA NHANTSI:** Yes Chair.

CHAIRPERSON: *Ja*, okay.

ADV KATE HOFMEYR: As I understood your evidence a moment ago Ms Nhantsi you were - you were told by Ms Myeni to engage him immediately after you arrived at SAA because there was a letter that needed to be prepared in response to National Treasury on the swap deal. Is that correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Did he assist you in crafting that letter?

20 **MS PHUMEZA NHANTSI:** Yes he did. He gave me the input to include in the letter and then when I finalised the letter together with the Acting CEO we then sent it to the Board. They reviewed it and the letter went to National Treasury.

ADV KATE HOFMEYR: Did that not strike you as strange at the time that some third party to SAA who was not been remunerated by SAA at all was going to be advising you on what letters to write and their

contents back to National Treasury?

MS PHUMEZA NHANTSI: It did raise a bell but Ms Myeni said Mr Mngadi is my person for any issue that I need to get clarity on. If Mr Zwane is not aware of any Mngadi knows very well about SAA. He has been working with him.

ADV KATE HOFMEYR: But he is not an employee of SAA?

MS PHUMEZA NHANTSI: No. To be honest I never asked Ms Myeni how Mr Mngadi is paid.

CHAIRPERSON: Hm.

10 **ADV KATE HOFMEYR:** But you later established that – apologies Chair.

CHAIRPERSON: I think we have the same question in mind. You could proceed.

ADV KATE HOFMEYR: But you established later he was not paid by SAA?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Thank you. I would like ...

CHAIRPERSON: That is quite – sorry.

ADV KATE HOFMEYR: Hm.

20 **CHAIRPERSON:** That is – that is quite strange that – you know – I asked you earlier on whether you understand that when it was said that Mr Mngadi was Ms Myeni's personal advisor whether what was meant that he was Ms Myeni's advisor in her capacity as a Member or a Chairperson of the Board and you said no.

You understood that he was just her own personal advisor

and in support of that you said he was not being paid by the Board and – and it is – it is quite a strange situation and – and I said I mean you obviously checked as the Interim CFO you would know who – who is paid who is not paid by the – by SAA.

So somebody who is an advisor to somebody who happens to be Chairperson of the Board or a Member of the Board but is a personal advisor is asked to advise you.

MS PHUMEZA NHANTSI: Chair perhaps I should have attempted to answer in two – in two ways.

10 **CHAIRPERSON:** Yes.

MS PHUMEZA NHANTSI: By saying one, he was not paid via SAA payroll and two he was – he was advising Ms Myeni. I am not sure about other things but he was advising Ms Myeni on SAA matters because Ms Myeni said if there are any queries or any questions that I have Mr Mngadi had a deep understanding of SAA.

CHAIRPERSON: Ja. No, no, no I understand the qualification that you – you are making and it is a legitimate qualification but what does remain is why would she – and this is something you might not have an answer for. Why would she want somebody to do work that assists the
20 Interim CFO of SAA or that assists SAA but that person – but SAA does not pay that person?

That is – that is strange because if SAA needs advisors – advisors must be secured or procured in a certain manner and they get paid by SAA.

ADV KATE HOFMEYR:

MS PHUMEZA NHANTSI: Yes Chair. Hence I inquired with Ms Kwinana and Ms Kwinana said to me Mr Mngadi is – is a – she put it roughly to say Mr Mngadi is Dudu's person.

CHAIRPERSON: Hm. (IsiZulu).

MS PHUMEZA NHANTSI: (IsiZulu).

CHAIRPERSON: (IsiZulu). Well I – I just used isiZulu because I could understand exactly when she was speaking in English what must have been said ...

ADV KATE HOFMEYR: Said in Zulu.

10 **CHAIRPERSON:** In isiZulu and she has confirmed. So ...

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Okay, thank you.

ADV KATE HOFMEYR: Ms Nhantsi I would like to just probe a little bit further pursuant to the debate – the discussion that you have been having with the Chair. It sounds to me from your description as though there was a third Member of the Executive Management Team of SAA because as I had your evidence earlier you were told if there were matters in relation to SAA affairs that Mr Zwane – who was the Acting CEO at the time – would not assist on.

20 Then you were told to go Mr Mngadi which puts him as one of the three people who were in the Executive position at SAA. Is that a fair summary of how you interacted with him?

MS PHUMEZA NHANTSI: Not really but you are right and I do not want to say you are right and wrong but halfway there. The only issues that I would get clarity perhaps from Mr Mngadi would be the ones relating

to the Board. So I would not say he was the third Executive because on other matters relating to the day to day running of the business I was not engaging Mr Mngadi.

ADV KATE HOFMEYR: So when SAA was writing letters to National Treasury in what capacity were you preparing those letters?

MS PHUMEZA NHANTSI: I was preparing the letters in terms of the protocol. Those letters need to go – they need to be signed by the Chairperson of the Board and go to National Treasury. So he was then assisting in giving input and I and Mr Zwane would write the letters,
10 give the letters to the Board for the Board to review and for the Chairperson of the Board to sign the letter and send to National Treasury.

ADV KATE HOFMEYR: The Board and the Chair would rely on their Executive Team?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: For the input into that ...

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Those letters.

MS PHUMEZA NHANTSI: Yes.

20 **ADV KATE HOFMEYR:** Is that correct?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: That is in accordance with proper corporate governance?

MS PHUMEZA NHANTSI: Yes, yes Chair.

ADV KATE HOFMEYR: Do you agree that it is strange that a third

party who is not a Member of the Executive of SAA is making input into that which the Executive places before the Board?

MS PHUMEZA NHANTSI: Yes it is strange Chair and also we need to be mindful or perhaps I need to highlight that those days I was week or two weeks old at SAA. So I was not really accustomed to how SAA worked.

ADV KATE HOFMEYR: Indeed. Thank you Ms Nhantsi. We will come back to the question of at what point in time you may have become more concerned about the role of Mr Mngadi. I would like to go – you
10 mentioned the swap transaction. For those uninitiated in relation to the swap transaction could you please assist us with what that related to.

MS PHUMEZA NHANTSI: Chair I came at a very late stage on the swap deal transaction. I do not have much memory on it because I was not involved from the beginning of the transaction but my recollection. I came at the time when there were letters between the Minister and the Board. I recall a letter where it was saying the Chair – the Minister of Finance was giving an instruction to the Board to stop the swap deal.

My understanding was there – many years ago SAA ordered aircrafts that were white body aircrafts. My understanding there were
20 10 or 20 then. Now they wanted to swap those aircraft. So the – the debate or the – the discussions were along those lines. So I came at a stage where there were those letters were then an instruction from the Finance Minister saying stop the transaction and all that. So that is the background that I have.

ADV KATE HOFMEYR: Thank you Ms Nhantsi. Chair this is an aspect

that will come up in all likelihood in the second evidence session for aviation but just for the assistance of understanding Mr Mngadi's role. He was particularly involved on that Airbus swap transaction. Is that correct?

MS PHUMEZA NHANTSI: Yes Chair he was involved because he knew he was the one who was giving me the background - myself and Mr Zwane – background on – on that swap deal.

ADV KATE HOFMEYR: Thank you. Could I ask you to go to page 200 in the bundle in front of you? That is DD2. It contains your statement
10 and it is an additional document.

CHAIRPERSON: What page again?

ADV KATE HOFMEYR: 200 Chair.

CHAIRPERSON: Thank you.

MS PHUMEZA NHANTSI: Yes I am there Chair.

ADV KATE HOFMEYR: If you just go – apologies Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: If you turn to the last page of that letter that appears at page 202 can you tell us who signs that letter?

MS PHUMEZA NHANTSI: Yes Chair it's signed Masotsham Mngadi
20 Executive Client Coverage.

ADV KATE HOFMEYR: Is that the same Mr Mngadi we have been speaking about?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: This relates, this is a letter that relates to the airbus swap transaction, is this a letter that you were aware of at the

time?

MS PHUMEZA NHANTSI: No Chair, I was not aware of the letter.

ADV KATE HOFMEYR: Thank you.

MS PHUMEZA NHANTSI: Perhaps to substantiate it's dated 30th October 2015.

ADV KATE HOFMEYR: Indeed what I was interested in was whether, in your engagements with Mr Mngadi after your arrival which is of course later than this date, whether this letter was ever presented to you or you considered it, you'll see that it deals with the role for the assistance of the South African Airways in its procurement of new aircraft and it sets out a great deal of detail about what the advantages would be for SAA if it were to conclude a lease transaction in relation to these aircraft. So when you were working on this matter and engaging with Mr Mngadi was this letter brought to your attention at all?

MS PHUMEZA NHANTSI: No Chair it was not and my understanding, I think this letter is still, perhaps substantiating or motivating the advantages so I came at the time when the Minister was saying stop the swap deal.

20 **ADV KATE HOFMEYR:** Thank you, insofar as your engagements with Mr Mngadi in relation to BnP is concerned, when did those occur?

MS PHUMEZA NHANTSI: Yes Chair I'm trying to go back because this is four years ago and I would like to be as accurate as I can, there were engagement, as I said I started in engaging Mr Mngadi in 2015, the NP came in the picture after the transactional advisor, I think at the

time I was also engaging with him on the BnP transaction.

ADV KATE HOFMEYR: Well let me maybe just assist with the chronology, BnP the bid for the transaction advisor services was in the middle of March 2016, my question would be, do you recall whether you engaged with Mr Mngadi in advance of that or only after that in relation to that transaction advisor service?

MS PHUMEZA NHANTSI: Are you saying in terms of the bid to appoint the transactional advisor?

ADV KATE HOFMEYR: Yes.

10 **MS PHUMEZA NHANTSI:** No the bid was done – I didn't engage Mr Mngadi on that, the bid was done by the bid adjudication, the bid evaluation and the bid selection committees, which I don't sit in any. So the only time that the recommendation came to me was after all those committees have concluded the work that needed to be done and BnP was motivated as the preferred bidder for transactional advisor.

ADV KATE HOFMEYR: And then engagements with Mr Mngadi about those transaction advisor services did that occur only after their appointment?

20 **MS PHUMEZA NHANTSI:** Yes it did, I would also like to highlight and say according to my recollection – because the reason why I'm saying so is, there was interaction in a way, sometimes regarding BnP there would be Mr Mahlangu writing to me and there would be Mr Mngadi calling me. So if you ask me, I see Mr Mngadi also as a team player in the BnP Capital company.

ADV KATE HOFMEYR: Thank you, there is a reference to a meeting

that was held with SAA in Mr Mahlangu's statement, I can take you there in a moment but let me just tell you what it is. There were meetings held on the 25th of April and the 26th of April which Mr Mahlangu said, Mr Mngadi attended on behalf of BnP, would you be able to confirm whether you were present at those meetings?

MS PHUMEZA NHANTSI: 25th and 26th?

ADV KATE HOFMEYR: Of April yes.

MS PHUMEZA NHANTSI: Chair I would like to go there, the reason for that is there was a meeting that I attended and Mngadi was there
10 but it was with Mr van der Merwe.

ADV KATE HOFMEYR: That would have been on the 8th of June, so what I'm interested in was, prior to that – let me take you to Mr Mahlangu's statement so we can place it in context, that is Exhibit DD4.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: You'll find it at page 18 in that statement.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: So at paragraph 5.18 on page 18, the following is recorded,

20 "During the process of doing a financial analysis of SAA's balance sheet and meetings, Mr Mngadi held with SAA on the 25th and the 26th of April 2016 we became aware of the fact that SAA could no longer wait for the financial advisory services to be completed as SAA was in dire need of funding because of, amongst other things",
And then three reasons for that position of urgency are

traversed, if you go over the page though to page – paragraph 5.19 it records,

“As a result of the above findings Mr Mngadi advised that the consortium, that is a reference to the consortium between BnP Capital and In-Line Trading, had been asked to submit a proposal in this regard”.

Ms Nhantsi if we just step back what I understand these two paragraphs to be saying is there was a meeting at SAA on the 25th and 26th of April which Mr Mngadi attended and at which the dire situation
10 of SAA was discussed and at which he was asked to submit a proposal for the sourcing of funds. Do you recall having been at those meetings on those two days?

MS PHUMEZA NHANTSI: No Chair, I was not in these meetings.

ADV KATE HOFMEYR: Who would he then have been meeting with?

MS PHUMEZA NHANTSI: The content of – on these maturity dates and the amounts of the loans that were maturing I’m aware of but I never had a meeting at SAA with Mr Mngadi and discussed this.

ADV KATE HOFMEYR: Would those not have been the obvious things that you were responsible for in your portfolio?

20 **MS PHUMEZA NHANTSI:** Yes, hence I’m saying I’m familiar with the content.

ADV KATE HOFMEYR: So would it strike you as odd that there would be a meeting arranged between SAA and Mr Mngadi to discuss matters directly in your portfolio that you did not attend.

MS PHUMEZA NHANTSI: Yes I would say it’s odd Chair.

ADV KATE HOFMEYR: And are you quite sure of the fact that you weren't at those two meetings?

MS PHUMEZA NHANTSI: I'm a hundred percent sure Chair.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Would there have been anyone under you who may have attended without your knowledge?

MS PHUMEZA NHANTSI: Chair I'm not aware I never got any feedback.

CHAIRPERSON: Yes.

10 **MS PHUMEZA NHANTSI:** Of the meeting that happened for two days discussing these points.

CHAIRPERSON: Yes and are you in a position to say it's unlikely that somebody under you would have attended a meeting of that nature without mentioning it to you in one way or another without you becoming aware.

MS PHUMEZA NHANTSI: Yes Chair, I'm certain that if they attended a meeting, especially a meeting that takes two days I would have been aware that they are attending a two-day meeting and I would have been briefed when they're back from the meeting.

20 **CHAIRPERSON:** Unless maybe if they didn't want you to know that they attended?

MS PHUMEZA NHANTSI: Maybe Chair, that's a possibility but ja.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Ms Nhantsi I'd like to then ask you to go back in your file which is Exhibit DD2 to page 285.

MS PHUMEZA NHANTSI: I'm there – sorry Chair.

CHAIRPERSON: Is that back to the...(intervention).

ADV KATE HOFMEYR: Back to DD2 and it's at page 285.

CHAIRPERSON: 285 thank you.

MS PHUMEZA NHANTSI: Yes I'm there Chair.

ADV KATE HOFMEYR: Ms Nhantsi can you help us with the mail at the top of that page, can you tell us who it's from and who it's to?

MS PHUMEZA NHANTSI: It's from Masotsha Mngadi to Phumeza – to myself.

10 **ADV KATE HOFMEYR:** Thank you and the content, would you just read that into the record please?

MS PHUMEZA NHANTSI: “Good afternoon madam, please find attached undercover hereof of a letter for your king attention, looking forward to engaging with you on this issue, thanks, kindest regard Masotsha Mngadi”.

ADV KATE HOFMEYR: And then if you turn over two pages, just to get the attached letter, you'll see that, that is a letter from BnP Capital dated the 29th of April 2016, can you tell us who that is from?

20 **MS PHUMEZA NHANTSI:** It is from Daniel Mahlangu the CEO of BnP Capital.

ADV KATE HOFMEYR: And it's addressed to who?

MS PHUMEZA NHANTSI: It's addressed to the Chief Financial Officer of SAA.

ADV KATE HOFMEYR: Is that yourself at the time?

MS PHUMEZA NHANTSI: It should have been the interim, yes.

ADV KATE HOFMEYR: And if you'll just read the first sentence there?

MS PHUMEZA NHANTSI: "Further to our meetings of 25 and 26 April regarding SAA's financial state of affairs and our interrogation of the SAS financial information including its balance sheet and income statement it is our considered view that a transactional advisor mandate has been augmented for the following reasons".

ADV KATE HOFMEYR: Thank you there's no need to go on for
10 now...(intervention).

CHAIRPERSON: Has to be augmented hey?

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Ms Nhantsi do you recall receiving this email?

MS PHUMEZA NHANTSI: Yes I do, even though it was a long time ago, yes I do Chair.

ADV KATE HOFMEYR: And do you recall that attached letter?

MS PHUMEZA NHANTSI: Yes but I still don't recall the meeting, the two-day meeting that I had.

20 **ADV KATE HOFMEYR:** Did you then go back to him and say I don't know what meetings you're referring to?

MS PHUMEZA NHANTSI: No I don't recall going back Chair but all I can say that I know, that I did was to send the information – the debt profile of the company because already at this time they were appointed. BnP Capital was already appointed as a transactional

advisor, so the information of the debt profile of the company was given to them but a two-day meeting I don't recall.

ADV KATE HOFMEYR: But this is a letter related to expanding the scope of the transactional advisor services, isn't it?

MS PHUMEZA NHANTSI: It's looks like Chair.

ADV KATE HOFMEYR: Yes and it seems to...(intervention).

CHAIRPERSON: Sorry Ms Hofmeyr has she had a chance to read the whole letter?

ADV KATE HOFMEYR: Apologies let's give her that opportunity.

10 **CHAIRPERSON:** Have you had a chance to read the whole letter?

MS PHUMEZA NHANTSI: It was a long time ago Chair, if I can be given a chance...(intervention).

CHAIRPERSON: No I mean recently to refresh your memory.

MS PHUMEZA NHANTSI: No Chair.

CHAIRPERSON: Okay it might be necessary that – if you feel that you need to get the context, just indicate, I wonder Ms Hofmeyr whether there aren't particular letters or documents that you might want to have a little bit of time to look at properly because it's been a long time and she might just refresh her memory.

20 **ADV KATE HOFMEYR:** Chair we have no difficulty with that, just in terms of the procedure, all of these documents were sent to Ms Nhantsi about...(intervention).

CHAIRPERSON: Oh they were sent?

ADV KATE HOFMEYR: Indeed about a week or so ago, so she has been in receipt of them for that period.

CHAIRPERSON: Oh okay.

ADV KATE HOFMEYR: It was on the basis of that engagement that I had assumed that we could work with it but Ms Nhantsi, at any point that you'd like to go over a document to refresh your memory, of course you should indicate that.

CHAIRPERSON: No I thought she might not have had that chance so it's fine if she has had that chance, but if, in order to respond you just want to have a look again at any document, just let us know.

MS PHUMEZA NHANTSI: Yes Chair, if I can be given two minutes just
10 to read this one specifically.

MS PHUMEZA NHANTSI: I'm done Chair thank you.

CHAIRPERSON: Okay just before we proceed, you did receive these documents about a week ago or so.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Did you get a chance to read them?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Ja okay I'm just wanting to alert you that I've allowed you with this one but I won't allow you to go through every one in circumstances where you did have a chance.

20 **MS PHUMEZA NHANTSI:** Okay Chair.

CHAIRPERSON: When I say I won't allow you to go through everyone that is to read from beginning to end but obviously if you want to just have a look at a particular part then that's fine, I was getting the impression earlier on that you might have had a chance to look at the letter recently, so...(intervention).

MS PHUMEZA NHANTSI: Thank you Chair, for your indulgence.

CHAIRPERSON: So the change – the idea is to try and be fair to you but at the same time we want to use our time properly.

MS PHUMEZA NHANTSI: Okay Chair, thank you.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Thank you Chair. Ms Nhantsi can I just confirm, your evidence indicates that you did not attend a meeting on the 25th and 26th of April with Mr Mngadi, is that correct?

MS PHUMEZA NHANTSI: Yes Chair.

10 **ADV KATE HOFMEYR:** Did you attend a meeting on those days with Mr Mahlangu?

MS PHUMEZA NHANTSI: No I never attended a meeting with Mr Mahlangu I've never seen him, I've been sending information to him.

ADV KATE HOFMEYR: Thank you for that. In relation to this letter thought, I would like to probe it a bit further because it comes to you on the 29th of April and it refers to meetings on the 25th and the 26th of April, regarding SAA's financial state of affairs, that's your portfolio is it not?

MS PHUMEZA NHANTSI: Yes Chair.

20 **ADV KATE HOFMEYR:** Were you not surprised to learn of meetings happening within your portfolio three days and four days prior to receiving this letter which you did not attend?

MS PHUMEZA NHANTSI: Chair chances are I would have been surprised but this letter dated 29th of April 2016 comes at a time where we – allow me to go back, we received an update on news from FDC

that we will no longer be funding to the tune of 15billion because of the directive that they received from National Treasury that they should stop giving SAA funding. So we had then, a meeting with – a telecom with the Board updating the about this so the Board then asked us on the 21st of April that we need to explore expanding the scope of BnP to include the sourcing of funds. So this is now 29th of April, this is after that date, so this is the date where we received – we already received a resolution from the Board to expand the scope of BnP to include the sourcing of funds. So the content of – that are on the letter is what we

10 discussed also with the Board and raising concerns on the urgency of the loans that are maturing at the end of June to the tune of 7.3billion. Some of the content of the letter talks about what was there on the scope of the transactional advisory services.

ADV KATE HOFMEYR: Indeed Nhantsi that Board resolution of the 21st of April, you will find in Ms Stimpel's bundle, bundle B at page 441, it's not particularly necessary that you go there, I just want you to be assured that there was a Board resolution by round-robin on the 21st of April resolving to approve the extension of scope of a transaction advisor to include sourcing of funding of 15billion for South African

20 Airways, is that the one you're referring to?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: My question still remains though Ms Nhantsi, how could it be that Mr Mahlangu or Mr Mngadi and BnP Capital were having meetings pursuant to that Board directive on the 25th and 26th of April at which the financial state of affairs of SAA were being discussed

and you, as the CFO of SAA had no knowledge that those meetings were taking place?

MS PHUMEZA NHANTSI: I don't know Chair.

ADV KATE HOFMEYR: And you have no insight for us as to who they would have been meeting with if it wasn't you or your department?

MS PHUMEZA NHANTSI: Now I would have to speculate, I don't know Chair.

CHAIRPERSON: So did you respond to this letter which suggested that you were part of meetings of 25 and 26 April 2016, did you respond
10 to it and point out that you don't know what they were talking about.

MS PHUMEZA NHANTSI: No Chair I did not respond hence I'm saying the letter dated 29, came at the time where we were busy then trying to do the procurement process based on the – and check the confinements, based on the fact that there are loans that are urgently coming to mature. So chances I would have received the letter maybe I wouldn't have even given the attention on the detail of the letter because we were urgently trying to the confinement – working with procurement to confine and source the funds because the loans were about to mature.

20 **CHAIRPERSON:** Well do you know whether you read the letter at that time, after receiving it?

MS PHUMEZA NHANTSI: I don't recall it Chair.

CHAIRPERSON: Do you know whether you did receive the letter at that time?

MS PHUMEZA NHANTSI: It was on my mailbox Chair, so yes I did

receive the letter.

CHAIRPERSON: So you did receive it but you...(intervention).

MS PHUMEZA NHANTSI: But I don't recall it Chair.

CHAIRPERSON: You don't know whether you read it at all?

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: But of course...(intervention).

MS PHUMEZA NHANTSI: But Chair let me also continue, as I'm saying some of the content of the letter is what is the mandate of the transactional advisor which BnP Capital was appointed to do.

10 **CHAIRPERSON:** No I understand what you're saying, I'm concerned that you don't remember whether you read the letter, am I correct in understanding your evidence in that way that you don't remember whether you read it or not?

MS PHUMEZA NHANTSI: No I don't remember Chair.

CHAIRPERSON: Yes because I would have expected that when you read it now, you would remember if it's a letter that you had read before but you do remember that you did receive it, that you have no problem with?

MS PHUMEZA NHANTSI: Yes Chair.

20 **CHAIRPERSON:** Yes is it possible that you would have ignored it and not read it?

MS PHUMEZA NHANTSI: Chair it's possible that I might not have deliberately ignored it but – because we were too busy, I would have, perhaps forgot to read it at the time.

CHAIRPERSON: Yes Ms Hofmeyr?

ADV KATE HOFMEYR: Ms Nhantsi I'll come back to that point in due course if I may when we deal with your motivation for the extension of the scope because certainly some of the motivation that is contained in this letter is what ultimately finds it's way into your motivation which I'll suggest to you in due course, is at least an indicator that you were familiar with the contents of the letter but I'm happy to go to that in due course. Before we leave the topic of interactions with Mr Mngadi, I'd like to just take you to some of the WhatsApp communications that you've provided to the Commission of your interactions between
10 yourself and Mr Mngadi and for that purpose if we can maybe just go to – in that same bundle page 101.

MS PHUMEZA NHANTSI: I am there Chair.

ADV KATE HOFMEYR: What is that Ms Nhantsi?

MS PHUMEZA NHANTSI: It's a WhatsApp message from Masotsha Mngadi.

ADV KATE HOFMEYR: And is this from the phone that you saved his details into as you described earlier in your testimony?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: And as is reflected at the top there, is that
20 how you saved his details?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Masotsha Mngadi SAA/Nedbank.

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: So in late November, two days after you arrived and you got his details you were aware that Mr Mngadi was

associated with Nedbank, is that correct.

MS PHUMEZA NHANTSI: Yes Chair he told me.

ADV KATE HOFMEYR: He told you?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Thank you. Can I then ask you to go next – well what I'd like to do Ms Nhantsi is just for the purposes of navigating your evidence, indicate that there are five decisions that were taken in relation to the B – at least the 15billion capital raising which are of particular importance as we try to unravel what happened in relation to
10 this fund raising at SAA. I'd like to take you, initially through those five decisions and have your evidence in relation to whether you, today, stand by those decisions that were taken and I do Ms Nhantsi because – and you'll correct me if this is not a fair reading of your statement but as I read your statement you may well have supported decisions at the time, knowing what you knew but you raise serious concerns about them now, is that a fair reading of your statement?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: So for introductory purposes I'd like to just go through the five I'd like to get on record what your position is in
20 relation to those five in broad terms and then my proposal for the rest of your evidence is to delve into some of them in a bit more detail where it becomes relevant to do so. If we can start with the decision to appoint the Free State Development Corporation to source the 15billion, Ms Nhantsi you will recall that, that occurred in a December 2015 meeting of the Board, is that correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: We've looked at that resolution in some detail in Ms Stimpel's evidence but I'd like you to have it before you for this purpose, you'll find it in A of her Exhibit which is DD1 and you'll find it at page 289 of that bundle.

MS PHUMEZA NHANTSI: Yes I'm there Chair.

ADV KATE HOFMEYR: Is that an excerpt of the minutes of the meeting held on 3 December 2015 of which you are familiar?

MS PHUMEZA NHANTSI: Yes Chair I'm familiar.

10 **ADV KATE HOFMEYR:** And you'll see in C on that page is where the decision in relation to the Free State Development Corporation is contained and what I read it as, mandating you and the acting CEO to do, I to urgently take the necessary steps to negotiate, conclude, execute and sign and/or dispatch all documents and notices related to the 14billion loan offer received from a potential funder, Free State Development Corporation as per the letter circulated at the Board meeting, you see that?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Do you stand by the decision that was taken
20 by the Board on that day to mandate you to conclude that transaction with Free State Development Corporation?

MS PHUMEZA NHANTSI: Please guide me, you want me to perhaps first substantiate why I stand by It then and why now I've changed my mind ...(intervention).

ADV KATE HOFMEYR: I'm interested in your current position and

we'll go into great detail in the course of your evidence about what was happening at the time, what you were aware of, but your current view. What I'm interested in the moment, because it will assist me in the evidence, if you stand by certain decisions even now, then it may be necessary to probe them in more detail, if now you regard them as being irregular or the product – to use some of the words in your statement a bigger scheme or a scandalous transaction, that will assist me in navigating where to focus in the evidence. So insofar as this decision to mandate you to conclude this transaction with Free State

10 Development Corporation, do you regard – do you stand by it today?

MS PHUMEZA NHANTSI: The answer would be yes and no, when I'm saying yes, if the company continued with the transaction at the time, the company was going to save on interest because at the time the company was paying an interest of 1.2billion per year just to service the debt and not to pay the capital portion. So if you look at the term sheet that was submitted by Grissag, looking at that I would say it would have saved the company but looking in detail now after the inquiry at the letter that I received from FDC and analysing it in detail, it looked like there were previous discussions that were done by FDC to

20 the extent that, already they had a potential investor, foreign investor which at the time I did not read in detail because you would also understand that I was three days or four days in the office. Today I would say – the reason why I am saying there was a bigger scheme it looks like there were discussions before the discussion. By saying that it means, already there were discussions to form with FDC, a joint

venture, there was a discussion already with a potential funder of that so – which happens to be the same funder of SeaCrest. So today then I'm not standing next to it I'm saying there were bigger schemes and perhaps there were people who stood to benefit from the transaction using me to conclude the transaction.

CHAIRPERSON: Well maybe let's get this clarified. I think what Ms Hofmeyr is – what her question is aimed at is two things, the first is whether knowing what you know today about that decision that was made by the Board do you support it, the decision and in answering
10 that question you may have regard to a number of things but part of it includes processes that may have been followed on or not followed or should have been followed. So if you look at that decision, how it was taken and everything that you know today, do you support that – do you say it was the correct decision that was taken?

MS PHUMEZA NHANTSI: No Chair it was not the correct decision, it was not in the best interest of the company.

ADV KATE HOFMEYR: Thank you. If we then go to the decision to appoint BnP Capital as a transaction advisor, as I have it from your statement, you do support that decision I take that from – at page 7
20 paragraph 23.

CHAIRPERSON: Did you say page 7?

ADV KATE HOFMEYR: Page 7 indeed Chair paragraph 23.

MS PHUMEZA NHANTSI: Yes I'm there Chair.

ADV KATE HOFMEYR: I would like to clarify though because what you say here in this part you are talking about the decision on the

transaction advisor and you're talking about the fact that there was a decision to appoint a transaction advisor and then a later implementation of that decision and you say in the third line at paragraph 23,

"I did not foresee anything untoward when I implemented the Board's instruction because based on the historical information my predecessor used to take instructions from the Board and submit a motivation afterwards',

I'm going to explore that further with you in your evidence but
10 in the part that we're at, at the moment where I'm simply asking you as the Chair has indicated to you to tell us whether today, knowing all you know, you still support that decision, what is your answer?

MS PHUMEZA NHANTSI: Yes I still support the decision Chair.

ADV KATE HOFMEYR: Thank you, the next one is the decision to extend the scope of BnP Capital from that of transaction advisor to sourcer of funds, knowing what you know now, do you support that decision?

MS PHUMEZA NHANTSI: No Chair, I don't support it.

ADV KATE HOFMEYR: Then there is the request for the approval of a
20 cancellation fee to be paid to BnP Capital pursuant to that extended scope do you today, support that decision?

MS PHUMEZA NHANTSI: I never supported it Chair.

ADV KATE HOFMEYR: We will have to go to your...(intervention).

CHAIRPERSON: I guess that means, therefore you still don't support it?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: We will pick that up Ms Nhantsi in relation to the recommendation that you wrote to the Board to support the payment of that cancellation fee. Chair that gives me a good background for the purposes of the remainder of the evidence. I see we're just before the tea break but if it's appropriate possibly we take it now and then we can return.

CHAIRPERSON: Yes let's take it now and – we'll take the tea break
10 and resume at half past eleven.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Both this morning and just now I have struggled to make it on time. We – because of meetings but we will try and improve. Let us proceed.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Ms Nhantsi as I indicated before the break I would like to now go into some detail in relation to these various
20 decisions that I have got your evidence in relation to your current position on them I would like to start with the decision in relation to the Free State Development Corporation that was taken at the 3 December board meeting and we looked a moment ago at the actual resolution which you found in Ms Stimpel's file A at page 289. I would like us just to look at it for a moment if we may? That is 289 of Exhibit

DD1[a].

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Ms Stimpel – apologies Ms Nhantsi I would like to just understand whether you understood this resolution in the same way that in the course of the evidence last week it had been understood by Ms Stimpel. At C what is recorded there is that you and the acting CEO must urgently take steps to negotiate, conclude, execute, sign and or dispatch all documents and notices related to the 14 billion loan offer received from a potential funder Free State Development
10 Corporation as per the letter circulated. What did you understand that to require of you?

MS PHUMEZA NHANTSI: Thank you Chair. I understood that as a mandate that we were given by the board based on the letter that was circulated on that day allow me to give a bit of background as well. When I joined SAA on the 27 November 2015 on the 1 December 2015 which is literally four days after I received a call from Mr Moyo – Mr Shepherd Moyo who is the CFO at FDC who first congratulated me on the move that I made to SAA and secondly asked me if SAA still needs the funding. Firstly I would like to declare which I did on my statement
20 that I did articles, I served articles at Sizwe Ntsaluba Gebodo with Shepherd Moyo we were both audit managers, senior audit managers. By the time he left he was the senior audit manager, I was the audit partner. So I saw nothing untoward him

1. Congratulating me on the move

2. Asking if SAA still needs funding because it was on the public

domain that SAA at some point there was a tender out there that needed funding for SAA.

So I responded to say yes SAA is still in need of funding. He told me that they can assist. So I asked, how can they assist? He said they can ...

1. I asked how can you assist because my understanding is you receive grant from government.

2. Do you have a mandate for that?

He responded by saying yes they are in talks with foreign investor and
10 their FDC Act allows them to do the transaction so I requested him to put it in writing and I then told him that because it was the 1st I said to him, put it in writing there is a board meeting on the 3rd of December I will then discuss it with the board which he did on the 2nd of...- the following day I then received a letter from Mr Moyo. I am not sure which page Chair it is on.

ADV KATE HOFMEYR: It is a page back. If you just go back in Ms Stimpel's bundle you will find it there at page 287, is that the letter you are referring to?

MS PHUMEZA NHANTSI: Yes Chair. This is the letter that I am
20 referring to. Basically it – it says what we said on the call because I asked him to put it in writing. I am not sure if I should read it Chair.

ADV KATE HOFMEYR: We have seen it before.

MS PHUMEZA NHANTSI: Alright.

ADV KATE HOFMEYR: So that is – Chair as long as you are happy with that?

CHAIRPERSON: Yes, no, no we have seen it. We have read it ja.

MS PHUMEZA NHANTSI: So I then on the – on the 2nd – on the 1st after I received a call on the following day – morning I updated the acting CEO Mr Zwane and I received the letter. I shared the letter. I made a copy. I shared it with him. He also agreed that let us take it to the board the following day and the process to do that is to give the submission to the company secretary which we did. She made copies and on the day the letter was circulated. There were many items on the – on the agenda item but the letter was discussed after the

10 deliberations – long deliberations that were done on the submission that was made on the day. There was a submission that was dated – signed 27 November. I think it was written 20 – on the 26 November recommended a company called Seacrest by Ms Stimpel. So the – after the long deliberations on the board on the recommendation that was made by Mr Stimpel recommending Seacrest to be appointed as a funder for R15 billion the company – the board raised concerns one was the rate they felt it is a bit high which was 5.8%. The second one there was also one of the attachments on the due diligence where it was said that Seacrest refused to give information for the company to

20 do the due diligence and also the proof of funds. They refused with the proof of funds. So the board after deliberated on it felt that because – they felt that it looks like if they do not want this due diligence to be done it was a bit odd because they felt as if it looks like Seacrest wants to get the letter of award and go and source funding perhaps they believed that maybe Seacrest does not have the funds. Therefore

it was declined. The second recommendation that was on that submission was the consortium of banks. If my memory serves me correct I am not there Chair I am not sure which page but it was recommending the consortium of banks to the tune of 4.3 billion.

ADV KATE HOFMEYR: Correct.

MS PHUMEZA NHANTSI: The board felt it defeats the purpose. The purpose of debt consolidation was to maximise and get – and pay the lowest interest because on average at the time the – in fact the accurate amount the company was paying an interest of 1.2 billion so
 10 they felt if they can put it one house they can pay a better rate. So it was then declined. The consortium of lenders and even the rates that the lenders were giving were the same rates that they were servicing – that were – they servicing the company at. So the board felt that it defeats the purpose. So they went through the letter. One of the things that I noticed on the board which I did not at the time because I was still new specifically the Chair of the board it looks like she knew about the - about the FDC and we were then told or mandated myself and acting CEO to urgently facilitate and run with the letter and do all the necessary documents because the company urgently needs the
 20 funds.

ADV KATE HOFMEYR: Thank you Ms Nhantsi. So is it fair to say you understood that your mandate was to conclude the transaction with FDC?

MS PHUMEZA NHANTSI: That was my understanding. As much as that was the understanding when I joined the company I always wore the

heads of ensuring that the processes are followed. So subsequent to this after the board meeting I then called – I think it was Friday if I am not mistaken the 3rd but I called the legal team – the procurement team which was comprised of Mr Lester Peter and Silas Matsaudza who was the commodity manager at the time. I then told them that the board has declined basically the resolution as we have read and they – I asked them how can we go about ensuring that we implement the board resolution but that the same time we are in line with the supply chain management process. We discussed it firstly Mr Peter's response was

10 more like this is a board resolution we should implement it because the board has taken a decision. But we discussed it because I wanted to make sure that at the end we act in the best interest of the company and Mr Matsaudza even went to his office to bring the Supply Chain Management Policy and there was a clause that they referred me to which is Clause on the SEM Policy. I am not sure which – what page is the SEM Policy Chair?

ADV KATE HOFMEYR: I will get that for you now.

MS PHUMEZA NHANTSI: Okay.

CHAIRPERSON: I think it is somewhere in your own statement as well.

20 **ADV KATE HOFMEYR:** It is.

CHAIRPERSON: I think you referred to it in your statement.

MS PHUMEZA NHANTSI: Oh.

ADV KATE HOFMEYR: It is on page 4 at paragraph 13.

MS PHUMEZA NHANTSI: Yes. Paragraph? Sorry page?

ADV KATE HOFMEYR: Page 4 of your statement which is right at the

beginning of your Exhibit DD2 bundle and you will find it at page – paragraph 13 on page 4.

MS PHUMEZA NHANTSI: Alright let me go there. Thank you Chair. Yes the SCM Policy of 2011 had Chapter 14.4 on the alternative offers and the sub clause 14.4.1 stipulated as follows:

“Regardless of whether the bidders submits an offer conforming strictly to the specification alternative offers may be considered and accepted provided that the other bidders are not prejudiced.”

- 10 So this is the clause that we used to ensure that we are in line with the SCM Policy because the other bidders are not prejudiced in this case because the board already declined Seacrest that was recommended. The board already declined the consortium of the banks. So the SCM Policy of SAA allowed that we can use this paragraph – sorry this clause to ensure that we comply with the SCM Policy and also we do what is needed by the board, the implementation. After that meeting following day I then called the legal team – the treasury team which is made up of Mr Stimpel and Mike – Mr Michael Klein. I then explain what happened in the board that the board declined Seacrest and the
- 20 consortium of the lenders and the board then mandated myself and the acting CE to engage urgently and conclude with the FDC. And then I told them that I engaged with the procurement team and they advised that it is allowed in terms of the SCM Policy. I recall that Mr Klein even wanted a copy of the – of the specific clause of SCM and he made a copy. In the discussion Ms Stimpel then was shouting if I am allowed

to use that name, shouting, and saying this is not allowed. The FDC was not in the list of the bidders that bided and this is against the policy and why did I go to procurement for funding, funding is excluded from the policy. It is guided by I think he said by some – the financial risk framework. So we then discussed that and then I wanted to understand from her where is the exclusion on the SCM Policy? Where is it excluded that the funding is not part of the SCM? I had a reason to ask that question. It is because when we attended the board meeting on the 3 December the board members told me that in the past

10 they made in fact I also read it on the pack. They made the treasury department together with my predecessor to cancel the tender that was done based on the financial risk framework because it was not following the procurement process and it was not competitive. It was not fair and it was not transparent. So she could not answer me where the exclusion is but she kept on saying that the board was wrong in excluding – in declining specifically Seacrest because the company needs funding which I agreed that the company needs funding but the questions that I raised to her was the board had reasons. She wanted the board resolution which I said she can get from company secretary

20 and then I explained that the board had reasons why they declined at the time because the company refused the due diligence. The company did not want to show the proof of funds. So I then explained to them and I gave them the copy and then they – the meeting was ended at the time. But we – they then updated me because I said this is the resolution that we need to implement. We then decided together with

procurement and treasury team that the best way to do it is to send the term – are you stopping me?

ADV KATE HOFMEYR: No not at all sorry.

MS PHUMEZA NHANTSI: Oh sorry. Is to send the template of the term sheet and also to send the RFP that was sent to the other bidders, to FDC. They requested me for contact details which I gave Michael Klein – Mr Klein and Ms Stimpel the contact details, the cell number of Mr Shepherd Moyo and the – they were sent. And we – Mr Shepherd Moyo were given – was given a deadline of 24 December to complete the
10 term sheet which he did. The term sheet was received back from FDC on the 24 December 2015 and it was evaluated early in 2016.

ADV KATE HOFMEYR: Thank you. Apologies please continue if there is more.

MS PHUMEZA NHANTSI: Yes. One of the things that I highlighted – that I noticed on the term sheet what – was – it is coming from the same – the funder is the same Grissag that was – that was a proposal for Seacrest. Seacrest as well when it was recommended the funder was Grissage AG PTY LTD. Now with FDC as well it was Grissag AG PTY LTD. So I remember one day when Ms Stimpel again came to my
20 office still shouting that the board took a wrong decision because now the company is going to be in default. She does not understand how the board was meddling with the procurement processes they should have accepted and approved Seacrest. So one question that I asked Ms Stimpel was, if you look at the rates that the same funder is giving when it was Seacrest it was 5.8% the interest rate fixed. When it was

FDC the interest rate was still fixed but at 4%. So I asked Ms Stimpel did she consider the – I understand that it was not part of the – FDC was not part of the bidders that submitted and followed the process. As much as now it is accommodated on SCM but did he consider that should the company have taken Seacrest the company was going to pay 1.8% more than if it takes FDC and 1.8% of 15 billion is about R270 million. So we – that is why I looked at - because Chair I would like to say at the time that I was running the transaction I think the end results was what I had in mind was there are loans that are maturing and we

10 had weekly meetings with the banks together with National Treasury and on all those meetings that banks both local and international they expressed their anxiety. They wanted their exposure to be reduced to the extent that they even wrote the DG of National Treasury wanting – because they said at the time they were raising two issues. They were raising the fact that the company – the company's performance is deteriorating and to the extent that they feel that are funding the operations of the business – the day to day operations of the business and they were saying it is not supposed to be like that. And they were true because if you go and loan money just to – to pay salaries it is not

20 sustainable. So they – they even said to the letter to National Treasury in the meetings they are now feeling as if they are the shareholders of SAA. They want shareholder to come to the party. The second issue that they raised was around governance where they said there are so many people in acting positions basically they felt that there is no accountability because when you are acting you are acting – there is no

really accountability. The third concern that the banks consistently raised at the time was the – the – I used to say the three men board but the board members they were – there were only three board members so they felt if the board could be beefed up they believed that then in terms of governance that would be done. So at the back of my mind I heard that and the banks at the time they were not – they told us that they will never – until all these are resolved including capitalisation from the shareholder to SAA they will not extend or roll over the loans beyond three months. And in the three months that they were giving

10 the company Chair every – every expiry of three months they were including a margin meaning the interest rate was increasing. So the interest rate was increasing, the interest rate was increasing now to be beyond the 1.2 so there would be point where the company would not even be in a position to service the debt. So at the back of my mind being appointed as an interim CFO I had that in mind that one of my duties was to pay debts as and when they are due. So we had this 1.2 billion that is servicing the debt. So when I looked one thing that caught my eye on the two before I even asked who is Grissag one thing that caught my eye was the difference on the interest rates from the

20 same funder.

1. If we took 5.8% and the other one is 4% and the company would have been – would have paid R270 million.

So at the time those were the things that I was looking at. In fact I even did a calculation which I presented to the – to the board where high level I then looked at the rates that were – the company was

currently paying and now if we pay 4% I think the interest on saving was R700 million so that was the ultimate goal to say if we do this also if we do it within the ambit of law together in line with the SCM Policy the company would pay 500 million on interest and save 700 million on interest Chair. So the – we received the term sheet. The treasury team, the committee then evaluated between now the preferred bidder which is Seacrest and FDC. FDC was then warned because of the rate. I recall I had a meeting with the FRS team where they told me now this is in January 2016...

10 **ADV KATE HOFMEYR:** Ms Nhantsi do you mind if we pause there just for a moment.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: Because there is an extreme amount that you have covered.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: In relation to just a crisp question initially and I would like to unpack it before we get to January 2016.

MS PHUMEZA NHANTSI: Alright.

ADV KATE HOFMEYR: Right. Let us start with Procurement Policy
20 needing to be followed.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: You gave us background as to the board's view that it should be followed notwithstanding Ms Stimpel's view that funding might have fell outside it.

MS PHUMEZA NHANTSI: Hm.

ADV KATE HOFMEYR: So do I have it that you regard it as applying to this procurement process?

MS PHUMEZA NHANTSI: Sorry?

ADV KATE HOFMEYR: You regarded the Supply Chain Management Policy as applicable.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: To the sourcing of funds.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Thank you.

10 **CHAIRPERSON:** Just before you proceed Ms Hofmeyr. You mentioned that earlier on whatever happened in December 2015 you were still quite new at SAA and so on.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: But I just want to ask this question. At that time how long had you been a chartered accountant?

MS PHUMEZA NHANTSI: For – that 2015 – I qualified in 2007 Chair so...

CHAIRPERSON: Oh okay.

MS PHUMEZA NHANTSI: So in 2015...

20 **CHAIRPERSON:** Oh so it is from 2007 about what – seven to eight years?

MS PHUMEZA NHANTSI: Eight years. Yes.

CHAIRPERSON: Seven – eight years.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: And during most of those years you were at Sizwe

Nthaluba Gebodo?

MS PHUMEZA NHANTSI: Yes, Yes Chair.

CHAIRPERSON: Okay no that is fine. I just wanted to get that context.

Thank you.

ADV KATE HOFMEYR: Thank you Chair. You indicated in your answer that you were advised by the commodity manager and Lester – Advocate Lester Peter that you could use Clause 14.4.1 of the Supply Chain Management Policy for the purposes of now implementing the instruction that you had received from the board on the 3 December to

10 conclude the transaction with FDC, is that correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: I would like to just debate that clause with you.

I know that you are not a lawyer.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: But I need to put to you that there is an entirely different interpretation of that clause.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: That would not have supported the extension to FDC at that point. You will find the full Supply Chain Management Policy in Ms Stimpel's bundle but I am happy to work off the excerpt that you have in your statement because there is nothing else in that clause.

20

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: Well as I say that I realise actually locating it in the policy is quite important.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: So let us go to it. It is in Ms Stimpel's bundle and it is C. It is Exhibit DD1 but File C of that bundle.

MS PHUMEZA NHANTSI: Okay.

CHAIRPERSON: Is it in the lever arch file that has got Ms Stimpel's statement?

ADV KATE HOFMEYR: It is indeed Chair but in division C of that...

CHAIRPERSON: Division C.

ADV KATE HOFMEYR: It is the last of them. So you will be looking for
10 DD1[c]. And you will find it...

CHAIRPERSON: Okay that is Exhibit DD1[c].

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: And what page?

ADV KATE HOFMEYR: Just to orientate everyone the policy begins at 868 but the relevant clause is at page 894.

CHAIRPERSON: 894?

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Thank you.

MS PHUMEZA NHANTSI: Yes I am there Chair.

20 **ADV KATE HOFMEYR:** Ms Nhantsi just to orientate you this Supply Chain Management Policy goes through – it traps in essence the various stages of the procurement process, are you aware of that?

MS PHUMEZA NHANTSI: Yes.

ADV PHILLIP MOKOENA: Yes because as I had your evidence earlier you said your role at SAA was to ensure that proper processes were

followed, is that correct?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Right. So you would be familiar with this. It goes through the various stages of the evaluation and – process for bids and then you get at page 894 to a heading called Evaluation Process, do you see that?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: So this is evaluation of bids that have been received and for which there are requirements in the preceding clauses
10 of the SCM Policy, do you accept that?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: So when you get to 14.4 which talks about alternative offers and it reads as follows:

“Regardless of whether a bidder submits an offer conforming strictly to the specification alternate offers may be considered and accepted provided that other bidders are not prejudiced.”

Now FDC was not a bidder in the prior procurement process that was embarked upon by SAA was it?

20 **MS PHUMEZA NHANTSI:** No it was not.

ADV KATE HOFMEYR: That RFP had an opening date and a closing date by which bids had to be submitted?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Correct?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: So when I want to suggest to that when this clause of the SCM Policy is talking about alternative offers from bidders it is envisaging bidders who have complied with the procurement requirements which are that they bid within the time period and then it makes available the prospect that you could accept an alternative offer from such a bidder that did not comply with the specifications of the bid provided it did not prejudice others, do you see that as a possible reading of that clause?

MS PHUMEZA NHANTSI: As you have rightfully said I am not a lawyer
10 and procurement advised me that this is the alternative because how I read it as I have declared that I am a chartered accountant for me it reads and say alternative offers may be considered and accepted provided that the other bidders are not prejudiced. How it was interpreted to me and how I understand it is even if you did not form part – you did not submit but if it is an alternative offer it can be accepted by the board provided it does not prejudice others.

ADV KATE HOFMEYR: I understand that that is what you were informed of at the time but do you accept that in the scheme of proper procurement where there are opening dates and closing dates for bids
20 and people have to get their bids in in that time which the preceding parts of this policy refers to.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: When it is now talking about bidders it is talking about bidders who participate in that process.

MS PHUMEZA NHANTSI: It is not clear Chair.

ADV KATE HOFMEYR: Okay. Well that ...

CHAIRPERSON: Do – do you accept that if the – if you interpret the clause to mean that you could accept a proposal from somebody who did not submit a bid within the time stipulated do you accept that that interpretation could defeat the purpose of having a date when it is open for bidders to put in their bids and a date when everybody is told is told it is now closed.

If you come after you are too late. Do you accept that - that interpretation could defeat that entire purpose?

10 **MS PHUMEZA NHANTSI:** I accept that Chair ...

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: But also how I – I interpreted it is now that process of bid opening and closing came and gone ...

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: Because the recommendation came to the Board ...

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: And the Board then declined.

CHAIRPERSON: Huh-uh.

20 **MS PHUMEZA NHANTSI:** So I then – when the Board said then engage with FDC.

CHAIRPERSON: Huh-uh.

MS PHUMEZA NHANTSI: How I interpreted it is ...

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: It is within this ambit of this clause ...

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: That it is in line. We can go and engage the FDC.

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: So your – your understanding of it was that it allows – it allowed SAA to take proposals or bids from even people who did not put in bids within the time?

MS PHUMEZA NHANTSI: That is – that is my understanding.

10 **CHAIRPERSON:** That is how you understood?

MS PHUMEZA NHANTSI: That is how I understood it Chair and also ...

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: What I also checked as – as I was doing – I was reading this was to check what the mandate is or what the role is of the Board ...

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: On the SCM.

CHAIRPERSON: Huh-uh.

MS PHUMEZA NHANTSI: Which is catered on the same SCM Policy ...

20 **CHAIRPERSON:** Hm.

MS PHUMEZA NHANTSI: Section 6.

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: If you allow me to go there Chair.

CHAIRPERSON: Yes, yes.

MS PHUMEZA NHANTSI: On page 881.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: Page 881 under 6.2.2. It talks about the Board – 6.2.2.3 it talks about:

“The Board will approve all SCM transactions which are in line with their delegation of authority and on request any other transaction of lower value as it deemed fit.”

So reading that the Board will – this transaction was within the – the purview of the Board and now it is the Board that is accepting an
10 alternative offer and my interpretation was it is in line.

(Background noise)

ADV KATE HOFMEYR: Apologies.

CHAIRPERSON: It is me. Okay, thank you. You may proceed.

ADV KATE HOFMEYR: Ms Nhantsi you will accept that what the Board decided on 3 December was not to follow any procurement process. Was it?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: They just wanted you to conclude the transaction with FDC?

20 **MS PHUMEZA NHANTSI:** Yes, yes Chair you are right but I decided that for – for the benefit of the company and to act in the best interest of the company I would follow the processes.

ADV KATE HOFMEYR: Indeed ...

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: But the accounting authority of SAA was not

concerned with proper process being followed?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Well – I am sorry. You – you just accepted a proposition that the Board did not follow any process but that might be so but was your understanding that the policy allowed the Board to do exactly that? Was that your understanding or that was not your understanding?

MS PHUMEZA NHANTSI: At the time – 3 December – I was – I was not
10 aware of what the policy caters and what the policy does not cater. Hence Chair after the Board Meeting I could not tell the Board that do not give me this mandate and we need to go – follow the process first ...

CHAIRPERSON: Yes, yes.

MS PHUMEZA NHANTSI: But after the meeting I called the – the Procurement Team and said this is what the Board is saying we must do – we must implement. Hence I said Mr – Mr Lester Peter said let us just implement because the Board has taken a decision ...

CHAIRPERSON: Yes.

20 **MS PHUMEZA NHANTSI:** But I was adamant and I felt uncomfortable Chair. I wanted to follow the – the procurement processes.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: I understand that throughout this transaction I did – I did things in reverse ...

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: Because the transaction itself falls within the ambit of the Board.

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: They take a decision but I – I went back every time to follow the procurement process.

CHAIRPERSON: Hm, okay.

ADV KATE HOFMEYR: Thank you Chair. I would then like to just pause in relation to your evidence in – on Seacrest and its margin on the Grissag offer because I understood you to say in your evidence and
10 you will correct me if I am wrong that you accept that at the time that Ms Stimpel in November 2015 recommended as Head of Treasury at the time that Seacrest be approved she was not aware of the underlying Grissag percentage. Is that right?

MS PHUMEZA NHANTSI: When you are saying underlying percentage you mean she was not aware of the FDCs and the others?

ADV KATE HOFMEYR: No not FDC. I am saying insofar as the Seacrest bid was concerned.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Seacrest was going to receive its funding from
20 Grissag. Correct?

MS PHUMEZA NHANTSI: Correct.

ADV KATE HOFMEYR: But at the time – 27 November – all that had been presented to the – those evaluating the bids that had come through was a Seacrest bid at 5.8 percent. Is that correct?

MS PHUMEZA NHANTSI: Correct, yes.

ADV KATE HOFMEYR: So she did not know at the time what portion of the 5.8 percent was going to be paid to Grissag. Correct?

MS PHUMEZA NHANTSI: Yes. I agree.

ADV KATE HOFMEYR: So she could not be criticised for being comfortable with 1.8 percent at the time because she did not know at the time that the Seacrest margin was 1.8 percent. Correct?

MS PHUMEZA NHANTSI: You are correct by saying at that time, yes.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Maybe do not sit too far from the microphone or bring
10 it closer if you want to sit back.

MS PHUMEZA NHANTSI: Apologies Chair.

CHAIRPERSON: So that whatever you say will be recorded.

MS PHUMEZA NHANTSI: Apologies Chair.

ADV KATE HOFMEYR: Ms Nhantsi just for the record ...

MS PHUMEZA NHANTSI: Perhaps can I expand when I am saying you are right when you say at the time? Ms Stimpel yes even myself in – in January because the reason why I said in January I raised the concern of the rate in January and in January it was after we received the – the FDC term sheet ...

20 **ADV KATE HOFMEYR:** Indeed.

MS PHUMEZA NHANTSI: And the FDC term sheet had 4 percent.

ADV KATE HOFMEYR: Indeed but you did not actually know what the Grissag percentage was on the Seacrest deal. Did you?

MS PHUMEZA NHANTSI: I knew.

ADV KATE HOFMEYR: No because what you had seen at the time - as

I have it – is the Grissag term sheet when they were to join forces with FDC.

MS PHUMEZA NHANTSI: With Seacrest. On the – on the memorandum itself the one that was submitted to the Board there was a table ...

ADV KATE HOFMEYR: Huh-uh.

MS PHUMEZA NHANTSI: That was showing the rates.

ADV KATE HOFMEYR: Indeed that only referenced Seacrest ...

MS PHUMEZA NHANTSI: Ja.

10 **ADV KATE HOFMEYR:** And 5.8 percent.

MS PHUMEZA NHANTSI: I agree with you.

ADV KATE HOFMEYR: Would you like to go to it because the one point I would like to make in relation to it ...

MS PHUMEZA NHANTSI: Ja.

ADV KATE HOFMEYR: You said that one of the reasons that the Board was uncomfortable with Seacrest was the rate of 5.8 percent. Do you recall saying that?

MS PHUMEZA NHANTSI: Yes.

20 **ADV KATE HOFMEYR:** That is not recorded as one of their given reasons. Do you accept that?

MS PHUMEZA NHANTSI: Yes. It was in the discussion item. In fact it was the – the point that was raised by the Chairperson of the Board.

ADV KATE HOFMEYR: Did you raise with her when she made that point that Seacrest was the cheapest at 5.8 percent of all the bids that had been received?

MS PHUMEZA NHANTSI: No I did not raise any issue at that time as I did not have the information at hand in terms of what is the average rates that the banks are changing at the time because I was on day four of my job.

ADV KATE HOFMEYR: Well it was not the average at the time. It was the submission from Group Treasury ...

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: To which you made reference ...

MS PHUMEZA NHANTSI: Ja.

10 **ADV KATE HOFMEYR:** Dated 27 November that is served before the Board at that meeting. Do you recall that?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: So it would have been part of the Board pack.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: Let us go to it just so that we can look across at that table.

MS PHUMEZA NHANTSI: Alright.

ADV KATE HOFMEYR: It is in Ms Stimpel's EXHIBIT DD1A and it – you will find it at page 2-5-6.

20 **MS PHUMEZA NHANTSI:** Sorry.

CHAIRPERSON: 2-5 ...?

ADV KATE HOFMEYR: Six.

CHAIRPERSON: Six?

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Okay. Yes.

MS PHUMEZA NHANTSI: Yes I am there.

ADV KATE HOFMEYR: Do you recall this table Ms Nhantsi?

MS PHUMEZA NHANTSI: Yes I do.

ADV KATE HOFMEYR: So you will see there at the pricing section towards the bottom the base rate of the various bidders is set out there. When I said Seacrest was the cheapest I should have been slightly clearer. It is the cheapest who were offering the 15 billion which seemed to have been a concern both for you and the Board. Do you accept that?

10 **MS PHUMEZA NHANTSI:** Yes.

ADV KATE HOFMEYR: So of the bids they received Seacrest was the cheapest. Do you accept that?

MS PHUMEZA NHANTSI: Yes I do.

ADV KATE HOFMEYR: And there was no confirmed interest rate that would be charged by FDC at the point in time that the Board decided to reject the Seacrest offer or the alternative offer. Is that correct?

MS PHUMEZA NHANTSI: Yes correct.

ADV KATE HOFMEYR: Thank you.

20 **MS PHUMEZA NHANTSI:** But it is the point that was raised by the Chairperson of the Board in the meeting.

ADV KATE HOFMEYR: Understood. What I was trying to clarify was whether anyone interrogated it when it was raised.

MS PHUMEZA NHANTSI: No I did not interrogate it Chair.

ADV KATE HOFMEYR: Thank you and then I would like ...

CHAIRPERSON: I am sorry. Are – are you saying the Chairperson of

the Board informed the Board Meeting what the interest rate would be that FDC would charge?

MS PHUMEZA NHANTSI: No Chair.

CHAIRPERSON: That is not what you are saying?

MS PHUMEZA NHANTSI: It is not what I am saying Chair.

CHAIRPERSON: Okay.

MS PHUMEZA NHANTSI: What I am saying is she said she raised a concern that the 5.8 might be high but she did not say compared to what.

10 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: Ms Nhantsi but you will accept compared to the bids that were before them ...

MS PHUMEZA NHANTSI: It was the cheapest?

ADV KATE HOFMEYR: It was the cheapest.

MS PHUMEZA NHANTSI: I agree.

ADV KATE HOFMEYR: Thank you. I then would like to just deal with the – the first reason that the Board is recorded as having given for rejecting the Seacrest bid. That had to do - as I understand your evidence and is reflected in the documents – with their unwillingness to
20 provide their source of funds and concerns around the Due Diligence. Is that correct?

MS PHUMEZA NHANTSI: Correct.

ADV KATE HOFMEYR: Did anyone raise with the Board that Legal had looked into this and had created a series of protections for SAA in the conditions precedent that had been designed for the agreement that

would be concluded with Seacrest?

MS PHUMEZA NHANTSI: It was discussed. It was raised but the Board was not comfortable with the fact that you will enter into an agreement yet the company do not know the company they are refusing with the information. Hence they felt that it looks like Seacrest does not have money.

They want the letter of award so that they can go and source the funds. So they were not happy with the condition precedent because it was there to say Seacrest must be accepted with the
10 condition precedent that they submit the – the documentation. So the Board was not comfortable with approving yet the Due Diligence is not yet completed.

ADV KATE HOFMEYR: Was there a representative of SAA Legal at that meeting?

MS PHUMEZA NHANTSI: I do not recall Chair whether he – the legal person was called or Acting CEO took this – discussed this but it was not me.

ADV KATE HOFMEYR: Can we then understand that this determination by the Board of the inadequacy of the conditions precedent ...

20 **MS PHUMEZA NHANTSI:** *Ja.*

ADV KATE HOFMEYR: That had been proposed by the legal review ...

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Was not canvassed with anyone from the Legal Department?

MS PHUMEZA NHANTSI: When you are saying was not canvassed you

mean nobody was – was called in?

ADV KATE HOFMEYR: Indeed.

MS PHUMEZA NHANTSI: Yes nobody was called in. The Acting CEO took them through.

ADV KATE HOFMEYR: Do you have a view on whether those conditions precedent would have been adequate and just before you answer that if I may just give the background? We went through them in some detail with Ms Stimpel but what they appear to do is to allow an agreement to be concluded with SAA subject to conditions precedent
10 that would have required all of that information which was not forthcoming prior to that point to then have to be provided before the agreement would take effect. Did you consider that at all in the advice you gave to the Board on the day?

MS PHUMEZA NHANTSI: Chair first I did not give advice to the Board on the day but the Board as I am saying the Board was not comfortable specifically as it is written on the Board Resolution. They were not comfortable because of those two instances and they did not call a Legal person to come in and explain. They declined it.

ADV KATE HOFMEYR: Just one more clarification. Did they raise at
20 all the conditions precedent that had been proposed?

MS PHUMEZA NHANTSI: I do not recall. I think what was – what was on debate on the day or what was discussed is the fact that Seacrest is refusing with the proof of funds and the – there – there is certain information for Legal to complete the Due Diligence.

CHAIRPERSON: Were you aware at that time yourself of those

conditions precedent that had been suggested?

MS PHUMEZA NHANTSI: I was not aware Chair.

CHAIRPERSON: Hm and do you – do you know whether the documents setting them out had been placed before the Board?

MS PHUMEZA NHANTSI: I do not recall the ...

CHAIRPERSON: You do not recall?

MS PHUMEZA NHANTSI: Draft Agreement Chair on the pack.

CHAIRPERSON: Okay.

MS PHUMEZA NHANTSI: That was submitted to the Board.

10 **CHAIRPERSON:** Oh – oh, alright. In terms of what the Board was told about Seacrest do you know whether there was a memorandum or a document which was speaking to Seacrest bid in detail?

MS PHUMEZA NHANTSI: There was a memorandum Chair.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: And was it a memorandum that you had had a chance to read before you came to the meeting?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: And you – you say it did not have these conditions ...

20 **MS PHUMEZA NHANTSI:** A Draft Agreement.

CHAIRPERSON: Precedent?

MS PHUMEZA NHANTSI: No Chair. If I recall the memorandum was explaining the process that has been followed from the RFP and was explaining the – the bidders that have submitted their bids ...

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: And the evaluation was done and based on this table the recommendation was – was Seacrest ...

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: And it was also - the same memorandum was then highlighting the urgency of the funds ...

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: That the company needs. It was even highlighting the liquidity risks ...

CHAIRPERSON: Hm.

10 **MS PHUMEZA NHANTSI:** That company together with the catastrophic risks ...

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: That the company would face should the company not get the funding, yes.

ADV KATE HOFMEYR: Ms Nhantsi I would like to assist – if I may – in this regard.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: Because our understanding from the evidence that has been presented thus far is that both 27 November submission
20 from the Group Treasurer was before the Board but so too was the memorandum that that recommendation had required be done by the Legal Risk and Compliance Section.

I will take you to those documents now - to which an annexure is the draft agreement with the conditions precedent. So maybe that will help refresh your memory as to whether that served

before the Board.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: And you will find that in DD1 at page 2-4-4.

MS PHUMEZA NHANTSI: DD1A?

ADV KATE HOFMEYR: 1A - apologies yes, A.

MS PHUMEZA NHANTSI: Page?

ADV KATE HOFMEYR: 2-4-4 – apologies I think I got that wrong as well - 2-4-4.

MS PHUMEZA NHANTSI: Yes.

10 **ADV KATE HOFMEYR:** I think that is the memorandum you are recalling. Is that right?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: So this is the Group Treasurer memorandum of 27 November. It is written – well to get the chronology exactly right. There is one that precedes this which recommended a DD be done. There was a DD done and it is dated – you will see it at 2-7-4 – it is dated 26 November because Chair you will recall from the evidence there was concern ...

MS PHUMEZA NHANTSI:

20 **CHAIRPERSON:** I just want to say there are so many of these acronyms. That is Due Diligence you are talking about.

ADV KATE HOFMEYR: It is – it is. DD for present purposes means Due Diligence not the exhibit number ...

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: We are currently dealing with.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: So Ms Nhantsi ...

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: You will see at 2-7-4 that is the SAA Exco submission prepared by Legal Risk and Compliance.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Do you recall seeing that at the time?

MS PHUMEZA NHANTSI: In the Board Meeting ...

ADV KATE HOFMEYR: You see this is what covers all of the concerns
10 ...

MS PHUMEZA NHANTSI: Ja.

ADV KATE HOFMEYR: Of the Legal Department about that Due Diligence. It – it deal with ...

MS PHUMEZA NHANTSI: Yes, yes I saw it. It was part of
27 November.

ADV KATE HOFMEYR: Okay. Well then you will see at page 2-7-5 ...

MS PHUMEZA NHANTSI: Huh-uh.

ADV KATE HOFMEYR: In the second line the sentence starts there:

20 “A Draft Agreement has been prepared for the
 proposed transaction with Seacrest. A copy is
 attached marked Annexure 2.”

That is the one that contains the conditions precedent.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: So you are satisfied that was also before the Board then?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Thank you.

MS PHUMEZA NHANTSI: But I do not recall it, yes.

ADV KATE HOFMEYR: Thank you. I would like to then just ask a few concluding questions on the FDC decision.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: Ms Nhantsi as I – as I have your testimony earlier you even raised on that call with Mr Moyo on 1 December an issue around the mandate of the FDC. Is that correct?

10 **MS PHUMEZA NHANTSI:** Yes it is correct Chair.

ADV KATE HOFMEYR: And as I understand your evidence he told you in no uncertain terms it was within their mandate to engage in this funding. Is that correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: You were then informed and I did interrupt you earlier – apologies for that – but I wanted to move in sequence to ...

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: January 2016 because you were about to get there ...

20 **MS PHUMEZA NHANTSI:** Okay.

ADV KATE HOFMEYR: And as we have Ms Stimpel's evidence on 6 January 2016 she relayed to you the outcome of a meeting that had been had between the Treasury Department of SAA and National Treasury at which National Treasury had indicated that this funding was beyond the mandate of the FDC. Do you recall that?

MS PHUMEZA NHANTSI: Yes I recall.

ADV KATE HOFMEYR: You recall her making that known to you on 6 January?

MS PHUMEZA NHANTSI: Yes and also I – I then said i will come back to her ...

ADV KATE HOFMEYR: Correct.

MS PHUMEZA NHANTSI: On that, yes.

ADV KATE HOFMEYR: Indeed.

MS PHUMEZA NHANTSI: Yes.

10 **ADV KATE HOFMEYR:** On that you seem to be agreed in your evidence.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Did that not worry you? What did you do when you said you would come back to her?

MS PHUMEZA NHANTSI: Yes. I did call the – the CFO of FDC. As I said to Ms Stimpel that I will go and – and find out and then I even specifically asked Mr Moyo which section on the Act of FDC are they mandated to do. He referred me to Section 4(A)(h) which is on the Posers of the Board on the FDC Act.

20 **ADV KATE HOFMEYR:** Well let us look at that if we may.

MS PHUMEZA NHANTSI: Sure.

ADV KATE HOFMEYR: Chair we do have it in the bundle.

CHAIRPERSON: In – in which bundle would it be?

ADV KATE HOFMEYR: I just have to remind myself. Yes it is in DD1C.

CHAIRPERSON: I have got EXHIBIT DD1C.

ADV KATE HOFMEYR: And you will find the Act begins at page 9-0-4.

MS PHUMEZA NHANTSI: Just hang on.

CHAIRPERSON: 9-0-4.

MS PHUMEZA NHANTSI: Sorry what is the page?

ADV KATE HOFMEYR: 9-0-4. Ms Nhantsi can I just ask a little bit more about that conversation? When he referenced that section of the Act did you go and look at it yourself at the time?

MS PHUMEZA NHANTSI: Yes I did.

CHAIRPERSON:

10 **ADV KATE HOFMEYR:** You – you said that he had indicated Section 4(F).

MS PHUMEZA NHANTSI: 4(A)(h).

ADV KATE HOFMEYR: 4(A) ...

MS PHUMEZA NHANTSI: 4(A)(h). It starts by saying:

20 “The Board of Directors shall have all the powers to achieve all the main objects for which the corporation is established and without detracting from the generality of the section the Powers of the Board shall include the following: to enter into and finance joint ventures or act as an agent.”

ADV KATE HOFMEYR: Ms Nhantsi I will probe that a bit further with you but can I just check.

MS PHUMEZA NHANTSI: Ja.

ADV KATE HOFMEYR: Did you run this past anyone in Legal at SAA?

MS PHUMEZA NHANTSI: I discussed it with the Head of Legal

Ursula Fikelepi.

ADV KATE HOFMEYR: When was that?

MS PHUMEZA NHANTSI: Sometime in January after I discussed it with – with Mr Moyo.

ADV KATE HOFMEYR: Did she agree with your interpretation?

MS PHUMEZA NHANTSI: Yes she did but it was not – I did not ask for a – a legal opinion. We were just discussing.

ADV KATE HOFMEYR: We will come back to why a legal Due Diligence was not done because that was actually requested in December by
10 somebody from the Legal Department.

MS PHUMEZA NHANTSI: Huh-uh.

ADV KATE HOFMEYR: Ms Nhantsi I accept that you are not a lawyer indeed.

MS PHUMEZA NHANTSI: But can I explain why I accepted this and the discussion that I had with Ms Fikelepi?

ADV KATE HOFMEYR: Indeed.

MS PHUMEZA NHANTSI: Because the Board has got powers to enter into finance, joint ventures or act as an agent. The discussion that I had with the CFO of FDC I asked how are they going to benefit or how
20 are they acting. He said the – in this transaction they are going to act as an agent because they do not have the funds.

The foreign investor in this case is Grissag AG will – will give the funds but they will charge a margin at SAA. So basically they are acting as an agent.

ADV KATE HOFMEYR: So let me just get the sequence of events right.

MS PHUMEZA NHANTSI: *Ja.*

ADV KATE HOFMEYR: You were told on 6 January that National Treasury ...

MS PHUMEZA NHANTSI: Hm.

ADV KATE HOFMEYR: Had taken the view that this was beyond the mandate of the FDC. Correct?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: You then went to engage FDC yourself. Correct?

10 **MS PHUMEZA NHANTSI:** Yes.

ADV KATE HOFMEYR: You were told by FDC that it – that National Treasury was wrong.

MS PHUMEZA NHANTSI: Hm.

ADV KATE HOFMEYR: That in fact it did fall within their mandate – 4(A)(h).

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Correct?

MS PHUMEZA NHANTSI: Yes Chair.

20 **ADV KATE HOFMEYR:** You had a conversation with somebody in the Legal Department but did not ask for any formal review to be done of this question. Correct?

MS PHUMEZA NHANTSI: At the time Chair I did not ask for it.

ADV KATE HOFMEYR: It did not worry you that the advice you were being given was directly contradicting what National Treasury had said?

MS PHUMEZA NHANTSI: Not – not really Chair at the time but now

looking back and having heard what I have heard up to so far it would worry me but at the time it did not.

ADV KATE HOFMEYR: Ms Nhantsi I accept you are not a – a lawyer but I must put this to you in fairness. The Powers of the Board of Directors of a company cannot be greater than the capacity of the company. That is why a lawyer looking at this would first start at the capacity of the company which is Section 4.

We did this the other day with Ms Stimpel in her evidence. You may have seen that. The capacity of the corporation in Section 4
10 is defined with reference to its main objects which is in three and none of those Sections 3 include lending between State Owned Entities. They are all specifically concerned with the Province of the Free State. Do you see that?

MS PHUMEZA NHANTSI: Yes I see that but as I have said – as I am saying she – he also referred me to this section ...

ADV KATE HOFMEYR: Hm.

MS PHUMEZA NHANTSI: Which I read and it – it made sense to me and I discussed it with Ursula Fikelepi but at the time I did not think of – of getting the – the legal opinion ...

20 **ADV KATE HOFMEYR:** But ...

MS PHUMEZA NHANTSI: But as you are rightfully saying it should not have exceeded the capacity. I do not know and thanks for that. I did not know.

ADV KATE HOFMEYR: Right. Let us ...

CHAIRPERSON: I am sorry. Did it cross your mind that it was strange

that an entity that is supposed to operate within a province – Free State – was seeking to involve itself outside of the province and with SAA?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Is it something that crossed your mind as ...

MS PHUMEZA NHANTSI: It did.

CHAIRPERSON: Rather strange?

MS PHUMEZA NHANTSI: It did Chair. I even asked and allow me to put in layman's terms because he is also not a lawyer. I asked one, I
10 said to him it is – it is public knowledge that FDC gets grants from Government. Where are you going to get 15 billion from and then he told me about the – the foreign investor?

I then said how is – how is FDC going to benefit. He said no in terms of their FDC Act – that is why I am saying allow me to put it in layman's terms because he then said the – the Act allows them to think outside the box and get money for – for Free State Development Corporation and how they are going to get money from this is there will be this intermediary and – I think he said 0.5 percent will be earned by FDC doing this transaction.

20 Therefore FDC is going to benefit. So it made sense to me Chair.

ADV KATE HOFMEYR: Ms Nhantsi how long after National Treasury raised this concern of the mandate of the FDC – FDC continued to be entertained as a possible source of funds becomes quite important in relation to the urgency with which funds eventually have to be sourced

when FDC and that transaction fell through.

I am giving you that background because I – I want to put to you that if Mr Lusenga's query on 11 December that a Legal Due Diligence needed to be done on FDC had been done – do you recall that he made that request?

MS PHUMEZA NHANTSI: Yes I did.

ADV KATE HOFMEYR: Would you like to go to the email containing it?

MS PHUMEZA NHANTSI: I remember it but we can go if you ...

ADV KATE HOFMEYR: Okay. It is in DD1A at page 3-0-3.

10 **MS PHUMEZA NHANTSI:** Yes I am there Chair.

ADV KATE HOFMEYR: DD1A page 3-0-3.

MS PHUMEZA NHANTSI: Yes I am there Chair.

CHAIRPERSON: Yes I've got it, thank you.

ADV KATE HOFMEYR: Thank you Chair, this is an email we looked at in last week's evidence. This is after the Board's decision on the 3rd of December to transact with FDC and then as I have it your efforts then to run a process for the procurement of FDC despite the fact that the Board had already taken its decision and in response to the sending out of the RFP to FDC Mr Lesenga, who I understand Lesenga, who I
20 understand is from the Legal Department in SAA, is that correct?

MS PHUMEZA NHANTSI: Yes, correct.

ADV KATE HOFMEYR: He sends an email on the 11th of December addressed to Michael Klein:

"Dear Michael

Are we going to conduct a legal and financial due diligence on FDC."

Do you see that?

MS PHUMEZA NHANTSI: Yes I do Chair.

ADV KATE HOFMEYR: Ms Nhantsi I can't resist say that does come as something of an irony to me that question asked on the 11th of December because you will recall one of the principle reasons for the Board not being willing to go with Seacrest was that it was not satisfied that an adequate due diligence had been completed and yet it approved FDC without any due diligence of any sort being done, do you accept that those are the facts?

10 **MS PHUMEZA NHANTSI:** Yes that is a fact.

ADV KATE HOFMEYR: Because the first time this is asked is on the 11th of December, so he asks for it to be done or whether it's going to be done and your response at the top of that page as I have it is: "Yes we will perform the legal due diligence and I would suggest that we give that mandate to Ursula at the Legal Department."

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: But that didn't happen formally did it, according to your evidence?

20 **MS PHUMEZA NHANTSI:** I don't recall getting any legal due diligence report.

ADV KATE HOFMEYR: Indeed, all you had was that conversation with her, is that right?

MS PHUMEZA NHANTSI: Not conversation, this is a mandate given Ursula.

ADV KATE HOFMEYR: No apologies, your previous evidence was

that you had a conversation with her in early January to check what you've been told by FDC, correct?

MS PHUMEZA NHANTSI: Oh, no but that one was more relating to the mandate but it was not saying she must not do due diligence, I was just asking about the FDC mandate, so this one is mandated the legal department to do the due diligence.

ADV KATE HOFMEYR: Yes, maybe we are at cross-purposes, I assume one of the questions that the Legal Department would have looked at, had it done this due diligence is whether it fell within the
10 FDC's mandate to be engaging in this transaction at all?

MS PHUMEZA NHANTSI: Yes, as I am saying I am not sure I didn't get a report from legal department so I am not sure what was covered.

ADV KATE HOFMEYR: Right, but ...(intervention)

MS PHUMEZA NHANTSI: But it was done at legal Chair.

ADV KATE HOFMEYR: Indeed, but at least in January 2016 you were happy to proceed with FDC as I have it, based on what Mr Moyo had told you about the capacity of FDC and the conversation that you had with the head of the legal department at SAA, correct?

MS PHUMEZA NHANTSI: Yes, I was happy to.

20 **ADV KATE HOFMEYR:** And those engagements with FDC as I have the evidence continued right up until April of 2016, is that correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Ms Nhantsi do you accept that if a proper legal due diligence had been done early in January, or indeed National Treasury's position on this had been accepted there would have been

an opportunity then and there to go out for another source of funds?

MS PHUMEZA NHANTSI: Yes I agree.

ADV KATE HOFMEYR: So when the FDC has continued to be entertained until April at least the months of February and March are lost for the purposes of sourcing funds.

MS PHUMEZA NHANTSI: Yes Chair can I also elaborate on that is – it is not just about entertaining FDC, it was more about also calculating as I said the interest rate that we were going to get from FDC which was 4% so when we continued with FDC I think in my mind I saw – I
10 was acting in the best interests of the company, looking at the interest rate that we are going to get, legal department was doing their part but from the numbers perspective for me it made sense to continue with them.

ADV KATE HOFMEYR: Indeed Ms Nhantsi but whether the FDC had legal capacity to enter into this is a fundamental requirement for this to have been a successful source of funds for SAA, isn't it?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: So I just reiterate the point if the work had been done early on in January or if National Treasury's view had been
20 accepted that would have been the end to the engagement with FDC would it not?

MS PHUMEZA NHANTSI: I agree, agreed.

ADV KATE HOFMEYR: Thank you. I would then like to go to the second decision which is the decision on the transaction advisor.

MS PHUMEZA NHANTSI: Perhaps before you leave that on my

statement if you allow me Chair to conclude because my answer was no, no in what I know today, I would like to say why because I thought you would ask this.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: Why today I feel that decision was not supposed to be made.

CHAIRPERSON: Yes, deal with that please.

MS PHUMEZA NHANTSI: Yes, Chair in my discussion with Mr Moyo at the time he mentioned that the Chairperson of their Board, in the
10 FDC Board was the brother of – was the sister of Mr Ace Magushule and at the time I could not link anything because clearly I was coming the professional background where we're doing the auditing and that so I was not really clued up with politics but now looking back and knowing what I know, having especially the testimony of Mr van der Merwe I see that in a way I was used a scapegoat or as a vehicle for people to enrich themselves, because knowing what I know now and also reading again and again the letter that – the one page letter that we received from FDC it does appear that there were discussions before the discussions. It leaves me with no choice but to conclude that perhaps
20 they used Mr Moyo to come to me because I would not question a letter that is coming from Mr Moyo because if it was anybody else that I never knew before I was not going to entertain it, so I feel Chair that knowing what I know now with Mr van der Merwe I was used in this transaction and the following transaction but I will talk about the following transaction at the time as well but one I was acting in the best interests

of the company, running like a headless chicken to save money for the company but not knowing that at the end there are certain people that will have rich pockets.

CHAIRPERSON: This decision of the SAA Board that you and the CEO, was it Acting CEO, you were interim CFO and there was an acting CEO.

MS PHUMEZA NHANTSI: Acting CEO yes Chair.

CHAIRPERSON: That you go ahead and take all the necessary steps and conclude an agreement with FDC. I know that you don't support it now as you sit there, you say it was not correct, but at that time, I just
10 want to make sure I understand it, at that time did you feel that it was a correct decision?

MS PHUMEZA NHANTSI: Yes Chair at the time I felt it was a correct decision, especially also backed up by the numbers.

CHAIRPERSON: Yes, and when you look – and your reasons at the time for taking the view that it was the correct decision would be what?

MS PHUMEZA NHANTSI: The reasons Chair at the time number one when you look at the letter that we received, sorry the term sheets that we received from FDC and you calculate how much savings would the company benefit number one the company was going to benefit
20 700million. Number two I was also comfortable with the fact that one this is the Board transaction, but I was comfortable that it was accommodated on the SCM policy, we followed the process, so at the time I thought we're doing a very good thing and in fact within the books of the company that we saved R700million in a year.

CHAIRPERSON: But you attended that meeting of the Board didn't

you?

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: Yes and as I understand your evidence you only found out about this clause of the policy after?

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: So at the time the decision was taken you didn't know that there was a clause that seemed to, or that was going to be said to authorise that the Board makes a decision in the way it made it, but at that time did you think that the Board was correct in making the
10 decision that it made namely go ahead and conclude an agreement with FDC for the provision of this funding without any process.

MS PHUMEZA NHANTSI: No Chair.

CHAIRPERSON: At that stage as you were sitting at the meeting.

MS PHUMEZA NHANTSI: As I was sitting in the meeting Chair I knew that I am going to follow that process and ensure that it is in line with the supply chain management, supply chain policy.

CHAIRPERSON: So as you were sitting at the meeting you didn't know whether it was in line or it was not in line?

MS PHUMEZA NHANTSI: No I was not aware Chair, hence I called the
20 procurement after the meeting to say this is the decision that has been taken by the Board, the Board is saying you must implement this, is it catered, is it in line with the policy, because if it was not Chair I was going to take it back to the Board.

CHAIRPERSON: So would it be correct that therefore you couldn't have been in support of the decision as at the time you attended the

meeting because you did not have enough information?

MS PHUMEZA NHANTSI: I did not have enough information Chair. And at the time I did not have also any reasons to doubt the Board that they are not taking the decision that is in the best interest of the company.

CHAIRPERSON: Yes, but when you talk about any decision being in the best interest of a company there may be two components to that, there might be a decision that in principle maybe in the best interest of the company but there might be also the issue of processes, whether
10 the right process is followed, so I guess that you would look at both before you conclude whether you say this decision is in the best interests of the company because if the right processes are not followed that might not be in the best interests of the company.

MS PHUMEZA NHANTSI: Agree.

CHAIRPERSON: Yes but are you saying that as you were sitting at the meeting you did not know whether that decision was in accordance with the processes but you assumed that the Board would not take a decision that was not in accordance with processes or what is your evidence?

20 **MS PHUMEZA NHANTSI:** I assumed number one, one thing that I knew at the time Chair was in terms of the delegation of authority this transaction is the Board's decision because I knew that any transaction that is above R50million the Board needs to take a decision, so when they took a decision in declining the Seacrest and the Consortium of the Banks and taking a decision of us engaging with FTC I thought at

the time the Board, I didn't have any reason to believe that there is anything untoward.

CHAIRPERSON: So at what stage or when would you say you had reached a point where you said no this decision of the Board is correct?

MS PHUMEZA NHANTSI: After I engaged with the procurement team and they said there is clause that allows the accommodation of the FDC letter.

CHAIRPERSON: Aren't the – shouldn't there have been certain
10 information before the Board about FDC that was critical for its decision that wasn't there, did the Board have all the information that it needed to have before it, before it could make a decision that we are choosing FDC to be the one to provide funding, because they were saying go ahead and conclude an agreement, isn't it?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Yes, did they have all the information that you in the position in which you occupied thought they needed to have?

MS PHUMEZA NHANTSI: No they didn't have all the information
Chair, the only document that was in the possession of the Board was
20 the letter that we circulated that morning, that was talking about FDC and the letter the reason why I thought there's nothing untoward because that's unsolicited proposal, so the unsolicited proposals because there was no commitment on that letter they were saying if you are interested there's nothing, there's no firm commitment but we can engage it further hence after the Board, yes I agree with you maybe the

Board took the decision with not enough information on their hands.

CHAIRPERSON: But I take it that you not being a member of the Board but being interim CFO that you are being at the meeting of the Board on that occasion included that you could advise the Board or alert them to any dangers in making a decision one way or another on a matter such as this. Would – did it – was that not part of your job at that meeting? Maybe to be able to say to the Board before you make any decision on these matters it's necessary to have the following information and I note that you don't have that information. My advice
10 is that you don't make a decision until you have that information, wasn't that part of what you were supposed to do?

MS PHUMEZA NHANTSI: It was Chair but considering that I was new they took the decision but hence I am saying I went back to the team as far as getting the term sheet to understand what is FDC offering but you are right I didn't raise a concern with the Board but in their fairness and in my fairness as well the fact that the company needed funding urgently I thought the decision was taken on an urgent basis that go and engage this process that the company had embarked on had failed now this is the unsolicited proposal go and engage and
20 conclude if the information surface, that was how I interpreted it.

CHAIRPERSON: Well that may be important because I noted when we looked at this extract from the minutes of the meeting of the Board that part 3 of the resolution, of the minutes that we looked at, at 289.

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: You don't have to go there. Didn't say something

along these lines the Interim CFO and the Acting CEO are are mandated to look into the following issues and if they are satisfied that those issues are in order go ahead and conclude. It said you must go and conclude.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: And that struck me as strange in circumstances where it seemed all that they had on before them in regard to FDC was just that letter, but from what you said you agree that they didn't have all the information that they needed to have in order to make that decision.

10 **MS PHUMEZA NHANTSI:** Agree Chair.

CHAIRPERSON: And you should have advised them, do you agree?

MS PHUMEZA NHANTSI: Agreed Chair.

CHAIRPERSON: And you didn't advise them.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: And why is that?

20 **MS PHUMEZA NHANTSI:** Chair at that point in time one, and I don't want it to be seen as if it is an excuse that one I was new, and it was the first board meeting that I attended, and I didn't know how they operate, hence I did not just take it Chair and implement, I took it and discussed with the teams and find ways of working on it and if there were any problems I would go back to the Board and say you are mandated as to run with this, but here are the challenges.

CHAIRPERSON: What information was not before the Board that you believe was important to have been before the Board, before they made the decision to say conclude an agreement with FDC?

MS PHUMEZA NHANTSI: Specifically the information that was not in front of them was the quantum, was the amount that FDC because the letter is silent on how much FDC would bring on the table, so the first one is that and the second one is perhaps if they were more transparent on the funder and perhaps if they would also be more transparent of whether the FDC had mandates then to do this. It would have also saved time.

CHAIRPERSON: And in terms of due diligence was that applicable or not applicable.

- 10 **MS PHUMEZA NHANTSI:** Not at that point Chair. The due diligence was going to be done after, because remember this is the day that we introducing FDC with the unsolicited proposal, so sitting in documentation would then come later, but at a minimum. On that day the letter should have included the quantum, the letter should have been more open on their potential foreign investor and perhaps the tenure of or the intention how long would they give, how much is the longevity of this debt, the interest rates and all that, but due diligence at the time Chair was going to be done later on.

- CHAIRPERSON:** Well I might not understand this, my understanding is
20 that that paragraph 3 of the extract from the minutes my understanding is that it – is that it includes that you and – it included that you and the Acting CFO, CEO, should conclude an agreement with FDC, is my understanding correct, is it the same as yours?

MS PHUMEZA NHANTSI: It's correct Chair, it is correct Chair.

CHAIRPERSON: But I would have thought that due diligence is

supposed to happen before you conclude an agreement?

MS PHUMEZA NHANTSI: No sure I hear you Chair, I thought you asked me what information should have been before the Board on that day, for them to decide.

CHAIRPERSON: Yes, no, no, I asked you that question earlier.

MS PHUMEZA NHANTSI: Oh, okay.

CHAIRPERSON: And then you told me what information you thought should have been before the Board, then I asked you the question whether due diligence should have been done before the Board could
10 make that decision.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: And I thought you were saying no not at that stage.

MS PHUMEZA NHANTSI: Oh sorry Chair, yes, due diligence.

CHAIRPERSON: It was supposed to have been done?

MS PHUMEZA NHANTSI: Agreed Chair.

CHAIRPERSON: And it wasn't done at that stage?

MS PHUMEZA NHANTSI: It was not done at that stage Chair.

CHAIRPERSON: And is that quite a critical thing to have due diligence done before a company such as SAA could say go ahead and conclude
20 an agreement with a particular entity?

MS PHUMEZA NHANTSI: It is Chair, it is a critical thing because you need to know the company that is going to be bringing money to the company, it is critical.

CHAIRPERSON: Yes, otherwise you would be putting SAA at great risk?

MS PHUMEZA NHANTSI: Yes Chair, hence as well to emphasize on that hence Seacrest on the previous, on the same extract was declined, it was declined based on the – one of the reasons was the due diligence.

CHAIRPERSON: And of course Ms Hofmeyr mentioned earlier to you that it was strange that one of the reasons why the Board rejected Seacrest was that due diligence had not been done, but when it came to FDC they approved FDC despite the fact that due diligence had not been done in regard to FDC either.

10 **MS PHUMEZA NHANTSI:** Yes Chair.

CHAIRPERSON: And would you have been alive to all of these things at the time of that meeting?

MS PHUMEZA NHANTSI: Not with due diligence.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: If, for me Chair in my capacity I would have advised the Board, I didn't, but I should have advised the Board at least to know the quantum, to know the potential funder and the tender and all that. I don't think at the time that I was attending that meeting I would have been alive to say due diligence.

20 **CHAIRPERSON:** Would it be correct to say that people who are familiar with businesses and so on and certainly chartered accountants should when told the Board for SAA approved that an agreement be concluded with FDC involving billions of rand without due diligence being made would it be correct to say a chartered accountant would say how could they do that? That that would be the reaction. Would that

be correct to say, that's what one would expect from a chartered accountant?

MS PHUMEZA NHANTSI: Not really Chair no, that's a ...(intervention)

CHAIRPERSON: Not really, it's not as bad as that?

MS PHUMEZA NHANTSI: No, no Chair ...(intervention)

CHAIRPERSON: It's something that can be entertained?

MS PHUMEZA NHANTSI: Not entertained but if for example one would hear that perhaps the Board has approved and there was no quantum, there was no interest then you would say as a chartered accountant why, why is that, but a due diligence is more in the legal space so to speak.

CHAIRPERSON: But the entity with whom SAA, the SAA Board would be saying go ahead and conclude an agreement, could we be proved to be completely deficient in terms of that, it's not the type of entity that can provide what you are looking for isn't it?

MS PHUMEZA NHANTSI: Agreed Chair, hence ...(intervention)

CHAIRPERSON: And you discover that if you do due diligence isn't it?

MS PHUMEZA NHANTSI: Yes Chair hence on my email on the 11th of December I was mandating the legal department to do the due diligence.

CHAIRPERSON: Yes, so your idea was that you were going to do it nevertheless, you were going to go for due diligence.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Even though you accept that it is something that probably should have been done before and that you – the Board

maybe should have been advised that wait until there is due diligence.

ADV KATE HOFMEYR: Yes Chair.

CHAIRPERSON: Okay, thank you.

ADV KATE HOFMEYR: Thank you Chair, we are at one o'clock, I have one or two follow up questions on this aspect.

CHAIRPERSON: Yes, maybe just ask those two.

ADV KATE HOFMEYR: Indeed Chair, I have also been told that there has been a delay on the lunch and that is only available at one thirty, I don't know if that should be taken into account in the decision about
10 when we break but I was asked to make that known. My sense is if we take the hour and it's only available midway that should still be fine, but ...(intervention)

CHAIRPERSON: Well if we take the hour and that still should be fine then let us take the hour, but I think you can ask the two questions.

ADV KATE HOFMEYR: Indeed. Thank you Chair. Ms Nhantsi I would just like to get clear on your understanding of your responsibilities in that meeting on the 3rd of December. You were the interim albeit Chief Financial Officer of SAA, correct?

MS PHUMEZA NHANTSI: Correct.

20 **ADV KATE HOFMEYR:** So you were there to look after the financial best interests of SAA?

MS PHUMEZA NHANTSI: Correct.

ADV KATE HOFMEYR: Correct. You have indicated to the Chair a list of information that should have been before the Board, before it decided to mandate you and the Acting CEO to conclude this

transaction, correct?

MS PHUMEZA NHANTSI: Correct Chair.

ADV KATE HOFMEYR: Amongst them I recall you saying there should have been an actual indication of how much was going to be funded, correct?

MS PHUMEZA NHANTSI: Correct.

ADV KATE HOFMEYR: That was not in the letter?

MS PHUMEZA NHANTSI: No it was not in the letter.

ADV KATE HOFMEYR: And that is all that served before the Board on
10 that day, correct?

MS PHUMEZA NHANTSI: Correct Chair.

ADV KATE HOFMEYR: There should have been a term to the loan financing, correct?

MS PHUMEZA NHANTSI: Correct.

ADV KATE HOFMEYR: There also Ms Nhantsi I want to suggest there should have been a clear indication of the rate, should there not?

MS PHUMEZA NHANTSI: Correct.

ADV KATE HOFMEYR: Because you cannot assess whether this is going to be in the financial interests of SAA unless you know what the
20 rate is, correct?

MS PHUMEZA NHANTSI: Correct.

ADV KATE HOFMEYR: So Ms Nhantsi I would like to ask you why you didn't raise any of that with the Board on that day, given that it was your responsibility to look after the financial interests.

MS PHUMEZA NHANTSI: Chair as I have agreed that I did not raise

this and I was supposed to have raised them, hence I followed the process of getting this information which we did get it on the 24th of December and if there was any challenge on this, for example if the term sheet came back with less than the 15billion, because on the day the Board assumed that SAA –FDC will give us either fourteen or fifteen billion. I take the responsibility that I should have highlighted this and I did not Chair.

ADV KATE HOFMEYR: Thank you. Chair those are the questions.

CHAIRPERSON: Okay, we will take the lunch adjournment and we will
10 resume at two.

We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Ms Hofmeyr I hope the time was enough.

ADV KATE HOFMEYR: Indeed. It was, it was thank you Chair. We have replenished ourselves and ready to go.

CHAIRPERSON: Ja, no, no that is fine. In terms of what time we finish this afternoon we did speak about the possibility of going beyond four o'clock would the second witness be – I mean able he knows about the
20 possibility?

ADV KATE HOFMEYR: He does.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: We did discuss that over the break.

CHAIRPERSON: Yes okay.

ADV KATE HOFMEYR: And that is in order I understand.

CHAIRPERSON: Okay no that is fine. That is fine. Thank you.

ADV KATE HOFMEYR: Thank you Chair. Chair in the interest of time and Ms Nhatsi my proposal is for the remainder of the evidence this afternoon on occasion to seek to summarise for you on occasion what is contained in documents just so that we can speed up the process but at any point if you want to have the document in front of you feel free to ask that that be the case. With your leave Chair if that will be convenient just to speed up the pace?

CHAIRPERSON: Yes no no that is fine. So what Ms Hofmeyr is saying
10 that in leading your evidence she might either summarise to you what a particular document says or she might ask you to just articulate the points that are contained in the particular document as you remember them. But should you feel that you would rather have a look at the document first before answering feel free to say so.

MS PHUMEZA NHANTSI: Okay Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Thank you. Ms Nhantsi I would like to move to the next decision which is the – sorry was there something you wanted to say?

20 **MS PHUMEZA NHANTSI**: Yes Chair with your permission I will be very quick?

MS PHUMEZA NHANTSI: Yes.

MS PHUMEZA NHANTSI: I would like to – to highlight something in closing.

CHAIRPERSON: Yes

MS PHUMEZA NHANTSI: FDC.

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: So say Chair as I have stated that I take full responsibility of not highlighting to the board.

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: The quantum and the interest rate.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: But at operational level Chair as you have seen that I did not take the decision and run with it.

10 **CHAIRPERSON:** Yes.

MS PHUMEZA NHANTSI: We went at an operational level and ensure that processes are done.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: And the contract Chair between SAA.

CHAIRPERSON: Hm

MS PHUMEZA NHANTSI: And FDC was not going to be concluded without the due diligence.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: I just wanted to just...

20 **CHAIRPERSON:** Yes. So if any of the things that you still wanted to look at were not what they were supposed to be you were going to raise that with the board?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Hm. Okay.

ADV KATE HOFMEYR: Thank you. If we then go to the decision in

relation to the transaction advisor. Ms Nhantsi this actually begins on the 21 April 2016 because that is the board resolution to extend the scope of the transaction advisor. You refer to that in your own statement. If we go to that at page 6 paragraph 21.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: That is of her statement?

ADV KATE HOFMEYR: Of her statement which is bundle DD2 I think. Yes. So we are in Exhibit DD2

CHAIRPERSON: Yes.

10 **ADV KATE HOFMEYR:** Which contains Mr Nhantsi's statement and we are at page 6 paragraph 21 and as I have it there you – apologies. I made an error Ms Nhantsi. At page 6 paragraph 21 you make the point that it was at the 3 December meeting that famous one where the FDC decision was taken that there is a decision now that a transaction advisor must be appointed to – in relation to the 15 billion debt consolidation, is that correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: And then you had a meeting with Ms Stimpel on the 6 January 2016 where in terms of her evidence she – you relayed to
20 her at the end of that meeting – remember that is the meeting at which she recounts to you what National Treasury's attitude is in relation to the mandate of FDC and on her evidence you said to her at the end of that oh and by the way the board wants to appoint a transaction advisor and she said but we do not need it because that work has already been done. Do you recall that?

MS PHUMEZA NHANTSI: Yes Chair I do.

ADV KATE HOFMEYR: As I understand your statement you however stand by the decision to appoint a transaction advisor, is that correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: And as I read your statement you said that there were three reasons given and you will see them over the page at page 7. It is the second part of paragraph 21. There are three reasons there Chair you will recall we went through them with Ms Stimpel for her comment. I would like to take you Ms Nhantsi through them for
10 your comment. The first that you were given was that Ms Stimpel was inexperienced in the position, is that correct? That was one of the motivations.

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: I would like to have your comment on that. Ms Stimpel gave evidence last week to say that she disagreed with that as being a legitimate reason. She explained that she had been in the treasury department for ten years. That she had often deputised for the then CFO's over periods and the Group Treasurers and in that context she did not believe that she lacked the experience to be able to
20 advise on the debt consolidation. What is your comment on that?

MS PHUMEZA NHANTSI: My comment Chair yes the board raised a concern that there is a lack of experience and expertise at the internal treasurer at SAA and I agreed with them more because as much as in contrary to what Ms Stimpel said that she had experience of ten years in the treasurer – as a treasurer she had only eight months in acting

and only a month in the permanent position. So I believed as well as the board raised concerns that she might not have the kind of expertise. Also if you allow me to combine with the other reason that the board also said in the past treasury of SAA and finance ignored the Section 217 for example of the constitution where they would not follow the processes and all that so they would like to get an independent opinion of an expert considering that this is the 15 billion magnitude and they have to be accountable for that. I did not have a reason not to agree with them at the time Chair because indeed when I checked

10 the Group Treasurer left SAA in February and then Ms Stimpel started acting and she was permanent for just a month.

ADV KATE HOFMEYR: Let us focus on that third reason that you were given which is that the board wanted external advise in relation to the debt consolidation transaction. Is that as I understand the rationale that was given?

MS PHUMEZA NHANTSI: Yes the – in terms of the – yes.

ADV KATE HOFMEYR: That as I understand your evidence was a decision taken at the same meeting that the FDC loan offer was supported by the board and you were mandated to execute, is that

20 correct?

MS PHUMEZA NHANTSI: Yes Chair it is correct I was mandated to execute but I then made a submission back to the board more because on the extract or on the resolution the transactional advisor part was not reflecting so I wanted a resolution to say as such.

ADV KATE HOFMEYR: Can we just separate two things. I think at the

moment you talking about the processes that follow the 3 December meeting we will come to those.

MS PHUMEZA NHANTSI: Alright.

ADV KATE HOFMEYR: Because it is part of the trend that develops through your statement that often the board takes a decision and then there are steps taken thereafter. I will probe that with you but what I am interested in is it is at the very same meeting that the board mandates you to conclude the 15 billion debt consolidation with FDC.

MS PHUMEZA NHANTSI: Agreed.

- 10 **ADV KATE HOFMEYR:** That they say we need a transaction advisor to advise us on the very thing that they have just told you to go and execute, is that right?

MS PHUMEZA NHANTSI: Yes except that it is two things. The transactional advisor was going to assist the company in reviewing the loans, the scope is there on the letter. The FDC was going to give the funding. So basically the transactional advisory services were only going to be done at the receipt of 15 billion. So it is two things.

- ADV KATE HOFMEYR:** So just help me with that. There was no need then to procure a transactional advisor until there had been the 15
20 billion funds secured?

MS PHUMEZA NHANTSI: Yes. No I do not want to say yes. The process even if the transactional advisor for an example the transactional advisor process in terms of procurement was done in March the 20th but until the funds are in SAA's account the transactional advisor was going to do nothing much, nothing really.

ADV KATE HOFMEYR: We will have to look at that because that does not come out in the motivations that I have seen. But we will go to them in a moment.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: Can I just be clear so it was not the case that the transaction advisor was going to be advising on the debt position, the merits of the debt consolidation, the position in relation to the loans because all of that had been taken care of on 3 December. You were going to conclude with FDC, is that right?

- 10 **MS PHUMEZA NHANTSI:** The FDC was going to source – give SAA the funding. The transactional advisor was going to review the debt loan book of SAA and advise which loans to pay first and which ones not to pay. One of the reasons that they raised – the board – was for an example from the naked eye I am not sure if I am allowed to name the banks Chair. There was a loan to the tune of 1.3 billion that was with Nedbank. The rate there was high but from the naked eye you would think that is the loan that you would immediately need to pay but it was a strategic loan because on SAA's balance sheet that loan was classified as an equity and it was strengthen the balance sheet of SAA.
- 20 So one of the duties of the transactional advisor was to review the loan book and advice the board – was to review the balance sheet and advice on how to restructure the balance sheet. That of course if after the receipt of 15 billion. And also look at the loan – the leases – the lease book in terms of how to minimise and reduce the exposure of the exchange rate and all that. FDC was just going to be bringing 15

billion and the rest of the analysis and the work of advisory services was going to be done by the company that they requested that we appoint.

ADV KATE HOFMEYR: So the debt consolidation decision was not a product of that very analysis that you describe having been done the previous year?

MS PHUMEZA NHANTSI: No. The debt consolidation decision was based on that fact that the company was paying 15 billion – sorry 1.2 billion interest in a year and it would – the loans – the company owed
10 loans to various financial institutions to seven of them so the decision was more taken to say can we consolidate the debt and put it into one pot.

ADV KATE HOFMEYR: Hm.

MS PHUMEZA NHANTSI: And so that we can maximise the benefit of the interest that you are paying.

ADV KATE HOFMEYR: So you do not accept that the work in assessing the existing loans, their impact on the balance sheet, all of that had been done the prior year by the treasury department. The outcome of which was this decision of a saving by consolidating the
20 debt. In your view there was still more work that needed to be done?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Is that correct?

MS PHUMEZA NHANTSI: In my view and it is in board's view as well.

ADV KATE HOFMEYR: Right.

CHAIRPERSON: Well my thinking had been that the transactional

advisors that their role would dictate logically that they come even before you get the money and look at your situation that is SAA's situation and be able to advise even in terms of which entity is providing you or SAA with the best arrangement loan in terms of the terms and everything based on SAA's own situation of debt. That had been my thinking. My thinking had been that even before the decision is made as to who do we go with that the transactional advisors would have had a role before that but I have never been involved in something as big as that and anything as big as that, is that

10 understanding wrong?

MS PHUMEZA NHANTSI: The understanding is correct Chair hence before the receipt of the 15 billion we started sharing the information with a transactional advisor after the processes were done and it was appointed – we started sharing the information but I believe minimal work was done because the information that they requested was the debt profile so they have not – they never requested the loan agreements and with the banks so that they can then advise that strategically this one is – you should not touch it. This one you should touch it. The only thing that we gave them was the debt profile of the

20 company, how much we owing whom, when are they maturing, how much are the guarantees that we still have unutilised, how much utilised, that is the kind of information that we already gave them.

CHAIRPERSON: Yes but the reason I am asking this is because I understand your evidence in response to Ms Hofmeyr's questions to be that the transactional advisors did not need to come before the money

from FDC was in SAA's bank account. They needed to advise when the money was already in SAA's account and – did I misunderstand you?

MS PHUMEZA NHANTSI: They did some minimal work Chair. I think I was more trying to attempt to distinguish between the fund raising and the transactional advisory services.

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: They have started some work and the reason why I am saying even the work that they did was minimal and you are right in saying they are supposed to start before – hence we give them
10 the information but the work was so minimal that they never even invoiced the company themselves.

CHAIRPERSON: Because I would have really thought that if you are going to need advice you need it before you make the decision as to who?

MS PHUMEZA NHANTSI: Agree Chair.

CHAIRPERSON: You should enter into an agreement with you might need advice even after for other aspects but it seems to me that the most important – maybe not the most important but certainly before you choose that you might need advice on various aspects so that you do
20 not choose an entity that is not appropriate in terms of its terms and conditions and rates that is not appropriate for your own situation. Is that more or less your own ...

MS PHUMEZA NHANTSI: I am not sure if I am getting that last one Chair.

CHAIRPERSON: Okay. Alright maybe I am confusing you. But I am

simply saying my expectation would be that SAA would say we need to have transactional advisors who can look at our situation as a company. Look at the debts, look at long term commitments, short term commitments, look at everything and look at what is maturing when and so on and so on and our investments or whatever and say, as you are looking for a lender for this purpose this is the type of lender you should be looking at. Or maybe not the type of lender but the lender who would be most appropriate for your situation is one that can give you at least the following terms bla, bla, bla in terms of minimum you

10 know. Anything that does not contain these would not be good for you. That is my expectation of what a transactional advisors would do but I may be wrong.

MS PHUMEZA NHANTSI: I get you Chair. Yes Chair that was the intention for them to review hence we gave them the information. But I should admit that certain things were overtaken by events Chair. Because immediately when the FDC could not give the funding and also their loans maturing I never made a follow up with them in terms of how far are you on the advisory service? The last time I spoke to them was when I gave them the information on the maturing of the debts and the

20 investments and all that. So I never followed up on getting the report because now we were busy chasing the 15 billion itself.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYR: Thank you Chair. Ms Nhantsi the upshot of my querying is the reasonable of a board of SAA taking a decision on the 3 December 2015 to mandate you to conclude a transaction with FDC to

secure the 15 billion debt which would thereby be consolidated and in the same breath appointing a transaction advisor to advise on the very thing that they have decided to mandate you to implement. Can I have your comment on that? Do you regard that as unreasonable?

MS PHUMEZA NHANTSI: Can you repeat it?

ADV KATE HOFMEYR: My difficulty is that on the 3 December as I understand your evidence.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: The board said we going with FDC we want you
10 and the acting CEO to conclude that transaction which is going to enable us to consolidate the debt and bring 15 billion into the company.

MS PHUMEZA NHANTSI: Right.

ADV KATE HOFMEYR: And in the same breath they decide that a transaction advisor needs to be appointed to review all those parts of SAA financial position which are secured through the very agreement you have been asked to execute. Does that not strike you as unreasonable as the Chair was indicating earlier it seems as though that work needed to be done before the decision was taken on the 3 December. On the 3 December they had taken the decision and they
20 want the person to advice on the very taking of the decision they have taken.

MS PHUMEZA NHANTSI: No Chair I do not see it as unreasonable because on one hand the company is going to get 15 billion, on the other hand the boards wants surety that the 15 billion is used as per the purpose of it. So I see it as two different things because the

transactional advisor was going to advise that pay A, B, C do not pay this, restructure balance sheet like this and all that so I do not see it unreasonable.

ADV KATE HOFMEYR: I understand your answer but your view was those resources did not live inside in SAA we needed to go externally for them?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Right.

CHAIRPERSON: And – and you – you view the decision as not
10 unreasonable even bearing in mind that it was taken on the basis of the letter at page 289 that we looked at where there was no rate specified and the letter said this is not a commitment and a lot of information that you said was important to be before the commission was not there. So you regard the decision as having been reasonable notwithstanding all of those things?

MS PHUMEZA NHANTSI: Yes Chair I regard it as reasonable on the basis that the letter was unsolicited proposal. So there was still some probing that needed to be done at operational level. So there was work that was still needs to be done. I think for me the reason why I say it
20 was reasonable is the board understands that there is 15 billion coming in. At the same time the board is accountable and responsible to make sure that the money is used according to the specification because at the end they have to account. So it is – for me it is more reasonable on that basis Chair.

CHAIRPERSON: But is it not the normal process that you gather

information before you make a decision? You do not make a decision first and gather information after.

MS PHUMEZA NHANTSI: That is the normal process Chair.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: Hence – hence after the decision that was taken by the board at operational level we followed the process and gathered the information.

CHAIRPERSON: But in terms of what was before the board – in terms of FDC that letter really how much information did that letter give them
10 that was important for that decision?

MS PHUMEZA NHANTSI: Without talking on behalf of the board Chair.

CHAIRPERSON: No, no, no not on behalf of the board you were at the meeting.

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: You know what was before them and we know it was that letter.

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: And that letter only in terms of documents if I recall correctly. So that letter was – that – it seems to me to have been the
20 kind of letter that did not give you – give the board enough information to justify making a final decision like that on such an important issue.

MS PHUMEZA NHANTSI: Yes Chair but that letter was an unsolicited proposal hence apologies if I sound as if I am repeating myself.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: Hence at operational level. Chair if the

decision for the board I would have just implemented it. After that meeting I would have just given FDC the letter of award.

CHAIRPERSON: No I understand that and I understand that you have said from your point you wanted to check certain things.

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: But when you read the decision of the board it does not seem to suggest that there is the implementation of its decision is dependent on anything that was yet to be – that was still to be checked. It seems to be final.

10 **MS PHUMEZA NHANTSI**: I agree with you Chair.

CHAIRPERSON: And that is what strikes me because if you are supposed to make a decision and here we are talking about a very big decision involving billions of rand for a company that was in serious debt. If you are going to make a decision like that I would have thought that you would want to make sure that all the information that you need to have is placed before you first before you make the decision. But what we see here is a situation where even on your own evidence certain important information was not before the board. Nevertheless the boards says go ahead, conclude an agreement. It
20 does not say, it principle we think we are inclined to go with FDC interim CFO and acting CEO look at ABCD. If ABCD is in order go ahead. It does not say that, you agree?

MS PHUMEZA NHANTSI: Agree Chair.

CHAIRPERSON: It just says take steps and conclude. That is what concerns me about the decision but you have made – you have stated

your views unless there is something else you want to add that should be fine.

MS PHUMEZA NHANTSI: No there is nothing Chair that I want to add.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYR: Ms Nhantsi I mentioned that we would go to the question of process again because you recall the FDC decision is taken but then you go through a process thereafter. In relation to the transaction advisor appointment a similar thing occurred, did it not?

MS PHUMEZA NHANTSI: Yes Chair.

10 **ADV KATE HOFMEYR:** If we go to your motivation you will find it at page 47 of your bundle which is DD2.

MS PHUMEZA NHANTSI: Yes Chair okay.

ADV KATE HOFMEYR: You see what strikes me as odd about this submission is as I have your evidence on the 3 December the board decides to approve the appointment of a transaction advisor but then as you see on the date of this motivation this 15 January the following year you write a motivation to the board and I quote under purpose “To request board to approve the appointment of a transaction advisor regarding the 15 billion consolidation debt restructuring exercise.” How
20 can that be regular?

MS PHUMEZA NHANTSI: When you say how can that be regular you are asking why did I do the motivation.

ADV KATE HOFMEYR: After the very decision that you are asking them to approve has already been taken.

MS PHUMEZA NHANTSI: Yes. As I have highlighted Chair the

discussion on appointing the transactional advisor was discussed on the 3 December but it was not on the board resolution. I wanted it to be on the board resolution so that the processes can be run. Procurement department for an example told me that mostly they run especially if I would say it is a board decision I need a board resolution and it was discussed 3 December but the board resolution as we have read it it did not reflect it. So I was more – this is more a formality to the board for me to get the board resolution.

ADV KATE HOFMEYR: Are you aware that there was another board
10 meeting on the 9 December 2015?

MS PHUMEZA NHANTSI: Yes there was I think I am aware.

ADV KATE HOFMEYR: I – if you go in DD1[a] – [c] apologies that is Ms Stimpel's bundle.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: You will see...

CHAIRPERSON: Did you say DD – Exhibit DD[c]?

ADV KATE HOFMEYR: Correct Chair.

CHAIRPERSON: And what page?

ADV KATE HOFMEYR: And we are at page 915.2.

20 **CHAIRPERSON:** 1

ADV KATE HOFMEYR: 915.2

CHAIRPERSON: 1915.

ADV KATE HOFMEYR: It is under Tab A3 if that assists.

CHAIRPERSON: Yes thank you.

ADV KATE HOFMEYR: You will see those are the minutes of the SAA

board of directors meeting held on Wednesday the 9 December at Emperors Palace. I see reflected as in attendance includes yourself, if that correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: If you go all the way to page 20 of 21 which is the – it is a very long record of that meeting you will find it at page 915.21.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: If we just go back a page to 915.20 you will see
10 a heading “Eleven Governance” there.

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: And you will see under 11B there is Round Robin Resolutions and then the SAA board of directors noted and ratified the Round Robin Resolutions and then all of them are listed. And then if you go to 915.21 you will see just after half way down the page there is an entry appointment of transaction advisor. You will see there:

20 “The Board by round robin as of 23 October 2015 resolved to approve the engagement of a competent transaction advisor to deliver, validate or enhance the A320/A330 swap transaction and the 15 billion funding requirement and RFP.”

Is that not the Board Resolution of – approving the engagement of a competent transaction advisor on the funding requirement?

MS PHUMEZA NHANTSI: It is Chair but also I think for me I was not here at the time but it was also discussed on 3 December the appointment of transaction advisor. So I did not have a resolution. So I wanted a resolution.

ADV KATE HOFMEYR: Well on 9 December do you accept that there was a resolution?

MS PHUMEZA NHANTSI: I see it Chair. I do not recall it though hence I did this again.

ADV KATE HOFMEYR: Okay because you then will agree that if they
10 did approve it on the 5th – on 9 December it would be inexplicable to then go to them in January 2016 and ask them to approve the very thing that is already been approved?

MS PHUMEZA NHANTSI: I agree with you but they did approve it again even the company ...

ADV KATE HOFMEYR: Indeed.

MS PHUMEZA NHANTSI: Secretary (intervenes).

ADV KATE HOFMEYR: Indeed they did but what I am probing with you is why you would go to ask for approval of something that has already taken place.

20 **MS PHUMEZA NHANTSI:** Chair you would see that they were ratifying the – the round robins that happened. For example this submission was 23 October 2015.

ADV KATE HOFMEYR: Huh-uh.

MS PHUMEZA NHANTSI: It was before my time. So – and it was discussed as – as I am emphasising on 3 December. I think the

prudent thing that perhaps could have happened was the Board or the Company Secretary to alert me to this to say hang on this decision had already been taken ...

ADV KATE HOFMEYR: Hm.

MS PHUMEZA NHANTSI: But a memorandum was taken – taken back to the Board and I got the – the approval ...

ADV KATE HOFMEYR: Hm.

MS PHUMEZA NHANTSI: Of the transaction advisor.

ADV KATE HOFMEYR: In your statement Ms Nhantsi you give a
10 different justification for your motivation in January. If you go to page 7 at paragraph 23 ...

CHAIRPERSON: Wait. Before that Ms Hofmeyr.

ADV KATE HOFMEYR: Pardon Chair.

CHAIRPERSON: So – so it seems that the – when the Board made the decision on 3 December to go with FDC they had a number of weeks before that. They had already the appointment of transaction advisors. Is that correct?

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** And those transaction advisors were not appointed.

CHAIRPERSON: Oh, okay.

ADV KATE HOFMEYR: So then the query remains.

CHAIRPERSON: Oh, the query remains.

ADV KATE HOFMEYR: We get to 3 December ...

CHAIRPERSON: Oh, okay.

ADV KATE HOFMEYR: On the same day that they approve FDC.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: They want a transaction advisor appointed.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: As I understand Ms Nhantsi's evidence she did not have a resolution to that effect yet. That is why I took her to 9 December ...

CHAIRPERSON: Yes.

10 **ADV KATE HOFMEYR:** To suggest that then reflects the resolution of the Board ...

CHAIRPERSON: Yes, okay.

ADV KATE HOFMEYR: And what we are now probing is well does it make sense then in January to go and ask them for the approval and I indicated to Ms Nhantsi as I read your statement you justify that conduct in January 2016 on the basis that that is something your predecessor had done as well.

MS PHUMEZA NHANTSI: Where ...?

ADV KATE HOFMEYR: Let us go to that if we may. It is page 7 of your
20 bundle which is DD2.

MS PHUMEZA NHANTSI: DD2?

ADV KATE HOFMEYR: Yes.

MS PHUMEZA NHANTSI: Oh, mine.

ADV KATE HOFMEYR: That is your statement.

MS PHUMEZA NHANTSI: Yes. Yes I am there Chair.

ADV KATE HOFMEYR: If you pick it up towards the bottom of paragraph 22. You say there in a sentence just before paragraph 23:

“Based on the instruction and the recommendation of the Board I compile the submission dated January 2016.”

That is a reference – as I have it – to the document we were just looking at.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Correct?

10 **MS PHUMEZA NHANTSI:** Huh-uh.

ADV KATE HOFMEYR: Then you say at 23:

“Then the Board at their meeting held on 16 January resolved under Item 14.11 that the Board approves the request for an appointment of transaction advisor to advice regarding the 15 billion debt consolidation restructuring exercise.”

And then you – as I read your statement give your justification for doing it in what I am going to suggest to you is the reverse order.

20 **MS PHUMEZA NHANTSI:** Huh-uh.

ADV KATE HOFMEYR: You say:

“I did not foresee anything untoward when implementing the Board’s instruction because based on the historical information my predecessor used to also take instructions from the Board and submit

a motivation afterwards.”

Do you see that?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Is that as you understand the position that your predecessor Mr Meyer used to do a similar thing? There would be a Board decision and then he would submit a motivation for the very decision that the Board had just taken previously?

MS PHUMEZA NHANTSI: No I think here what I was trying to – to say and to justify I think when I met with the – including yourself
10 Ms Hofmeyr - you insinuated that it looks like I was just implementing the instructions of the Board – just take the instructions and – and go with them.

I think here what I was – I was doing is to show you that I do not see anything untoward because even the – the Memorandum of Incorporation does say that the CEO is to implement the instructions from the Board.

ADV KATE HOFMEYR: Hm.

MS PHUMEZA NHANTSI: So here basically I am saying the Board discussed on 3 December and I am doing the submission taking –
20 taking it back to them for them to formalise. So I was trying to say even my predecessor did the same at some point.

ADV KATE HOFMEYR: Well I would like to follow up on two aspects. Let us go to what your predecessor did because you do offer as justification the fact that Mr Meyer did a similar thing ...

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: And you give as an example of that the email correspondence that appears at page 52 of your bundle - if we can go there.

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: Did you say 5-2?

ADV KATE HOFMEYR: 5-2 Chair.

CHAIRPERSON: Thank you.

MS PHUMEZA NHANTSI: Yes I am there Chair.

ADV KATE HOFMEYR: Ms Nhantsi just as a preface to my question I
10 do not want my question to misunderstood. I take no issue with the Board taking decisions and management executing those decisions afterwards. The force of the concern is that the Board takes a decision and then a submission is made to it requesting that it take the very decision it has taken.

Do you contend that these emails at page 52 show that Mr Meyer did the latter? In other words received – was aware of a decision taken by the Board and then went back to the Board to ask the Board to take the very decision they had taken.

MS PHUMEZA NHANTSI: Yes Chair if – if you first look at the first
20 email on page 52 if you allow me to read it.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: “Dear Chair ...”

It is coming from Mr Meyer.

“Dear Chair, following the decision of the Board to withdraw the RFP we formally in writing advice all

the recipients of the RFP that it has been withdrawn. We shall work on and provide the Board with a formal paper on debt consolidation as a matter of urgency.”

So how I interpreted this is Mr Meyer was given instruction by the Board to cancel the RFP because the RFP did not follow the procurement process and all that and – and he was then instructed to provide a formal paper on debt consolidation as a matter of urgency. So this email confirms that he was given an instruction and then he is
 10 agreeing here that okay I am taking the instruction and I am going to compile the debt consolidation right up.

ADV KATE HOFMEYR: Ms Nhantsi I put it to you that those are two very different things. The one is a decision of the Board to withdraw the RFP which Mr Meyer is instructed to implement and he does. The other is that they want a further paper on debt consolidation which he gets his team to work on.

We understand from Ms Stimpel's evidence that indeed took place. I put it to you that that is not a situation in which the Board took a decision to withdraw the RFP and Mr Meyer then made a submission
 20 to the Board requesting them to take a decision to withdraw the RFP. Do you accept that?

MS PHUMEZA NHANTSI: I accept that and I would also like to add and say perhaps the reason why it looks different in the past a funding as Ms Stimpel testified that it was excluded from the procurement – from the SCM Policy. What we were doing here is to ensure that the funding

because it is not exempted from the SCM Policy.

So perhaps what you might see it different is because now we are following the procurement process. The Board will take a decision and I would want to make sure that it is in line and it is aligned with the SCM Policy.

ADV KATE HOFMEYR: Ms Nhantsi just to be clear so that there is no discrepancy on the record.

MS PHUMEZA NHANTSI: Hm.

ADV KATE HOFMEYR: I am not debating at all the merits of whether
10 there should have been a procurement process followed.

MS PHUMEZA NHANTSI: Huh-uh.

ADV KATE HOFMEYR: What I am interested in is a developing theme
...

MS PHUMEZA NHANTSI: Huh-uh.

ADV KATE HOFMEYR: In the management of SAA that appears to be evidenced in your statement. That the Board takes decisions and then thereafter they get motivations from management that they take the very decision that they have taken and I submit to you that email is not evidence that Mr Meyer engaged in that but that your motivation of
20 16 January is evidence of that procedure being adopted.

MS PHUMEZA NHANTSI: I guess through you Chair yes it might be seen as a theme but I think going forward it is – it is how it is especially if it is a Board transaction. A Board will take a decision and at operational level will ensure that the processes are followed.

CHAIRPERSON: I am not – I am not entirely sure that you are not at

cross purposes. Maybe – maybe you are not at cross purposes. Let me try this. What Ms Hofmeyr is saying to you is this.

MS PHUMEZA NHANTSI: Hm.

CHAIRPERSON: She says when she looks at the documentation – some of the documentation she sees that what you did is that after the Board had made a certain decision you would approach the Board and ask the Board to make the same decision again and the understanding is that you seem to – you may seem to have suggested that your predecessor used to do the same. Is that your – do you understand
10 what I am talking about?

MS PHUMEZA NHANTSI: Yes I do Chair.

CHAIRPERSON: Because I think the context is that on 3 December certain decisions were taken but on 9 December a certain decision was taken also relating to transaction advisors and there had been a round robin resolution on 23 October about transaction advisors but in January you approach the Board – January 2016 – and – and ask them to make a decision that they had already made. That is – that is the concern. You understand it?

MS PHUMEZA NHANTSI: (No audible reply).

20 **CHAIRPERSON:** And she is saying the correspondence to which reference has been made at 52 does not reflect – does not support anything you may be saying along the lines that your predecessor used to approach the Board and ask it to make decisions that it had already made.

MS PHUMEZA NHANTSI: Yes Chair thank you for – for clarity. Chair I

think one I agree with you that – and I agree with Ms Hofmeyr – that I would take it back to the Board. The reason for me to take it back to the Board would only – it is on instances where the Board Resolution does not reflect it and – and the second one maybe what it might be seen as abnormality is because in the past the funding was excluded from SCM Policy.

So it was derived from the Financial Risk Framework. Maybe how it was done was the – the Treasurer would – would compile documents and then take them to the Board. So what was happening
10 on this one was firstly we took it as this is a Board transaction and the Board has to make decisions on them.

So on instances where for an example there is an extract from the Board like when they decline Seacrest. When they mandated myself and the Acting CE to – to conclude with FDC I did not take it back to the Board but on instances where I do not have the Board Resolution I would take it back to the Board.

It might have been a new thing at SAA Chair but also I would expect if that was not the normality because I would assume that for any instruction from the Board it has to have a Board Resolution but
20 the Company Secretary as well allowed me to do that.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Ms Nhantsi I understand your answer to involve the proposition that the Board needed to take a decision in relation to the appointment of the transaction advisor that is why you needed to go back to them again to get a resolution. Is that right?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Are you aware that they did not make any decision in relation to the appointment of the transaction advisor? That ended at the CEO level. It never went to the Board.

MS PHUMEZA NHANTSI: Yes there is a reason for that Chair. After the procurement process was – was conducted by all the committees the amount of the – the amount that the – the transaction advisor was 2.6 including VAT. I think it was 2.8 million. So because it was the amount itself was – it was falling within the – the ambit of CEO we were
10 advised that we can take because the Board has already approved the concept that and you must go upon the transaction advisor now the amount is low. The CEO can sign it. So the resolution is signed by the Acting CEO.

ADV KATE HOFMEYR: It did not have to go back to the Board?

MS PHUMEZA NHANTSI: No that one because already the Board took a decision on it.

ADV KATE HOFMEYR: Right and in relation to this theme that I have described do you agree from a corporate governance point of view the challenge that might present itself when the records of the decision
20 making of SAA is maybe looked at from the outside might be the following: if the Board takes a decision but then management there is on record asking for that very decision to be taken again.

There is at least an appearance that the originator of the perceived need is management in the company and not the Board. Do you see that by presenting your submission that is what it makes it look

like? That it was management who identified the need for a transaction advisor.

MS PHUMEZA NHANTSI: Yes I agree and I would say perhaps the only shortfall on the submission would be on the background. I think where I fell short was perhaps on the background – on the submission for example I should have said this decision was – was already taken by the Board on 3 December.

We are just making this submission to get the – the Board Resolution. Maybe I – going forward as well what I have learnt I will
10 then improve the – the writing but I will still take it back to the Board if the – I do not have the Board Resolution but I would beef up - as you rightfully say – that the outsider will read as if it is us as management who is requesting.

ADV KATE HOFMEYR: Because ordinarily those decisions would come from management. Would they not?

MS PHUMEZA NHANTSI: If it is within the ambit of management, agree.

ADV KATE HOFMEYR: What the company needs to operationalise itself, what sort of expertise it needs to assist it. That is usually
20 something feed from the bottom up. Is it not?

MS PHUMEZA NHANTSI: Both sides because the Board as well needs to make sure that the – whatever decisions that are taken by the Board especially if they fall within their delegation of authority they need to be comfortable. So it would both be coming - those decisions will be coming from both sides.

ADV KATE HOFMEYR: But do they not rely on management to guide them?

MS PHUMEZA NHANTSI: What do you mean?

ADV KATE HOFMEYR: You are saying that the Board should get external people to advise it on decisions that fall within its delegated authority. Must it not rely on management for that purpose?

MS PHUMEZA NHANTSI: It depends if they do not feel comfortable that internally we have got the expertise.

ADV KATE HOFMEYR: Hm.

10 **MS PHUMEZA NHANTSI:** They - it is within their right to request that external sources – resources be obtained.

ADV KATE HOFMEYR: Do – are you aware that the Board is responsible for appointing the CFO and the CEO of SAA?

MS PHUMEZA NHANTSI: The Board is responsible for appointing the CEO with – in consultation with the Minister. The CEO is responsible for doing the recruitment process of the CFO but recommended to the Board.

ADV KATE HOFMEYR: Are you – do you take issue with the fact that if the SAA Board had any misgivings about the expertise within
20 management of SAA they could steps to resolve that and get new people in those positions?

MS PHUMEZA NHANTSI: Come again.

ADV KATE HOFMEYR: You suggested in your answer that Boards can go outside ...

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: For expertise that I am suggesting to you should come from management and I understand your answer to be well if there are not those expertise in management ...

MS PHUMEZA NHANTSI: If they feel.

ADV KATE HOFMEYR: They can go outside, yes.

MS PHUMEZA NHANTSI: If – if they feel Chair. If they feel that is not enough expertise especially on the transactions that fall within their delegation of authority. If they feel there is not enough expertise it is within their right and it is catered on the SCM Policy for them to go and
10 secure the – the work outside.

ADV KATE HOFMEYR: So they should not be required to beef up their management team for that purpose?

MS PHUMEZA NHANTSI: Yes they would – they are required to beef up their expertise but all I am saying is they are not confined. Only the Board has got a right as well to feel – if they feel that there is no expertise for this transaction internally they do have a right to source it externally.

ADV KATE HOFMEYR: Yes I guess the point is if they feel – well – it would be a justified decision if as a matter of fact those expertise were
20 lacking within SAA. Is that not correct?

MS PHUMEZA NHANTSI: Yes it would be justified.

ADV KATE HOFMEYR: If they were available internally then the decision to go externally would not be justified?

MS PHUMEZA NHANTSI: It would not be justified.

ADV KATE HOFMEYR: Thank you.

MS PHUMEZA NHANTSI: But also can I clarify that? As we – you took me to the minutes of 9 December where the Board was ratifying the – the resolutions that were taken via round robin. This transaction advisor was one of the – let alone that I repeated it – but the transaction advisor was one of the things that the Board – the decision that was taken by the Board in October.

So it means even in October the Board felt that there are no expertise to run with this transaction internally.

ADV KATE HOFMEYR: Indeed. The only point is either they were right
10 or wrong about that.

MS PHUMEZA NHANTSI: Oh, okay.

ADV KATE HOFMEYR: Thank you. Let us now move to the actual selection of BNP Capital as the transaction advisor if we may. You – your statement does not deal in much detail with this appointment but both you and Ms Stimpel agreed with the supply management's assessment of the bids that were received and supported the appointment of BNP Capital. Did you not?

MS PHUMEZA NHANTSI: Yes we – I supported it Chair.

ADV KATE HOFMEYR: Can I understand from your evidence because
20 Ms Stimpel's evidence was that she relied solely on the recommendation that was produced by Global Supply Management and did not look at the underlying tender documents. Were you in the same position as her?

MS PHUMEZA NHANTSI: Yes Chair I was in the same position as her and also there is a reason for that Chair. I guess the one reason – the

reason why I do not give much detail on the process is because I never sat in any of the committees. I did not sit in BA – Bid Adjudication. I did not sit in Evaluation and the Selection Criteria.

I was made aware when I joined SAA that we as the business units we tell the procurement or the GSM the needs that the company – the needs for – for your business but you would be meddling if now you want the - and the details as in okay you are recommending A. Give me all the documents supporting A.

So the information that you are given and I was given as
10 surety that all the – all the members that are sitting in those committees they signed a confidentiality agreement and the committees are comprised of various expertise in the organisation. So I also relied on the – on the information that I was given.

ADV KATE HOFMEYR: Can we go to that recommendation document? It is in Ms Stimpel's bundle which is EXHIBIT DD1 and it is the A Bundle of DD1 and you will find it – it is the last document in that file at page 4-2-7.

MS PHUMEZA NHANTSI: It is the last document?

ADV KATE HOFMEYR: Yes. You go all the way to the back you will
20 find 4-2-7. You will see that is where the document commences and then if you go to page 436 I see that as your signature confirming that you recommend the appointment of BNP Capital. Is that correct?

MS PHUMEZA NHANTSI: Where is my signature? On page 4-3-6?

ADV KATE HOFMEYR: 4-3-6 you will see at the top it says "recommended by" there is a space for Cynthia Stimpel and then a

space for Phumeza Nhantsi to sign.

MS PHUMEZA NHANTSI: Are we on DD1A?

ADV KATE HOFMEYR: Yes we are.

MS PHUMEZA NHANTSI: 4-3 – oh 4-3-6. Oh, sorry I was on 4-3-6.1
sorry.

ADV KATE HOFMEYR: No not a problem.

MS PHUMEZA NHANTSI: Yes. Okay, yes.

ADV KATE HOFMEYR: Can you confirm that is your signature?

MS PHUMEZA NHANTSI: Yes it is mine Chair.

- 10 **ADV KATE HOFMEYR:** And you indicate there that the budget is going
to be catered for under your cost centre. Is that correct?

MS PHUMEZA NHANTSI: Agree Chair.

ADV KATE HOFMEYR: And was this a document then that you
considered in determining whether to support the recommendation that
BNP Capital be appointed for these services?

MS PHUMEZA NHANTSI: Apologies Chair. Can I – I just want to see
the front of the ...

ADV KATE HOFMEYR: It is at 4-2-7.

MS PHUMEZA NHANTSI: Yes, yes Chair.

- 20 **ADV KATE HOFMEYR:** So can I take it you would have considered this
document before you decided to support the recommendation?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Let us go through it just in two respects. I am
interested at page 4-2-9.

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: So 4-2-9 tells you amongst other things – sort of mid of the way down – the names of the bidders who were responded to this bid for transaction advisor services and you will see there the first bullet is Nedbank and the last bullet is BNP Capital. Do you see that?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: And then if you go over to page 4-3-4 you will see at page 4-3-4 the consolidated scores for price and BBBEE are set out under 11. Do you see that?

10 **MS PHUMEZA NHANTSI:** Yes Chair.

ADV KATE HOFMEYR: And those show the different scorings of Nedbank, Regiments, Nisela Capital, BPS and BNP. Is that correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: So at the time that you supported the recommendation that BNP Capital be appointed I take it you would have been aware that one of the other bidders was Nedbank. Is that right?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: And then just at the bottom to – to conclude on a point we made earlier. The approval required here was BAC support
20 and CEO approval. Not Board approval. I understand your evidence to be that is because the amount was only 2.6 million. Is that right?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Thank you. So Ms Nhantsi you like Ms Stimpel were relying on that document ...

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: For the purposes of recommending BNP. Is that right?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: If you were told that there were irregularities in the BNP bid such that it ought not to have qualified or indeed been selected would you then revise your previous answer at the commencement of today that you supported the decision to select BNP as the transaction advisor?

MS PHUMEZA NHANTSI: The question is if I – if I knew at the time – if
10 I was told ...

ADV KATE HOFMEYR: Hm.

MS PHUMEZA NHANTSI: That there are irregularities with the BNP – no I would not have supported it.

ADV KATE HOFMEYR: And if I told you about those irregularities now and we went through them and they were things like failures to provide a consolidate BBBEE certificate for the JV that BNP Capital was entering into and I told you that that was a requirement of the tender. Would you regard that as irregular?

MS PHUMEZA NHANTSI: Yes.

20 **ADV KATE HOFMEYR:** And if I told you that it was a requirement of the tender that there be a JV Agreement provided in any circumstance where the bidder was bidding in a JV and no agreement was provided with the bid would you regard that as irregular?

MS PHUMEZA NHANTSI: Yes I would.

ADV KATE HOFMEYR: And if I told you that there was no pricing

schedule that identified what work BnP Capital would do and what work its JV partner would do despite that being a requirement of the bid. I take it your answer would similarly be that would have been irregular to a point then?

MS PHUMEZA NHANTSI: Yes Chair especially if the requirement was saying they must have those yes.

ADV KATE HOFMEYR: Indeed but I have your evidence to be you were not aware of those failings in the bid submission of BnP Capital at the time?

10 **MS PHUMEZA NHANTSI:** I was not aware Chair.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: But would you – would it have – would it not have fallen within your responsibilities to satisfy yourself whether there was – whether there were any irregularities in terms of that bidder, would that have been something that fell – would have fallen outside of your responsibilities to check those things before you say, okay I support this?

ADV KATE HOFMEYR: Yes Chair there are certain documentation that we are not supposed to see it stays in those committees so Chair,
20 if in this submission there were irregularities that were highlighted basically that are being brought to my attention, it is then my responsibility to act upon them and that is why I'm then saying, if at the time I was told that there were those irregularities, yes my response would be different from the approval.

CHAIRPERSON: Yes but you say there was some documents that

didn't come to you or that wouldn't come to you?

ADV KATE HOFMEYR: Yes, yes Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Ns Nhantsi I'd just like to probe that a bit further this was going to come out of your cost centre because there was no other budget for it, is that right?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Would that not heighten your level or responsibility then to ask to see those documents?

- 10 **MS PHUMEZA NHANTSI:** No not to see the confidential documents Chair, in terms of the budgeting process at SAA there are costs that are budgeted on CEO cost centre, on CFO cost centre and also on Company Secretary cost centre. Most of those cost centres are used when the Board, for example, have requested the likes of an external service provider and I looked into my budget, which is the CFO's allocation and I had money on it, that is why I said it will be catered on my budget because at the beginning of the year when the budget was done, this decision was not yet made, so I was going to accommodate it on my – so it was not going to – to answer your question straight,
- 20 Chair, the budget of 2.6million was not going to trigger me to request the confidential documents that I'm told I'm not suppose to see.

ADV KATE HOFMEYR: Ms Nhantsi why would they be confidential *vis a vis* you?

MS PHUMEZA NHANTSI: Chair the committees, I was told when I joined SAA and when I joined SAA as well I was also mindful and

careful of not meddling with procurement processes. I was told that the members of those committees, they sign confidentiality agreements and all that, so for me I would see as if I'm meddling and when they're recommending this company, it's like I'm question why others so basically I should have sat on one of the committees. So I'm not sure whether you perhaps checking if – I should have checked all the submissions that were done by the bidders and how did they score them and how did they come to the recommendation, I relied on their expertise and their qualifications that they're qualified to be in those

10 committees and they're qualified to recommend and we rely on them.

ADV KATE HOFMEYR: Ms Nhantsi, I've got no difficulty with the proposition that you were relying on this submission and you didn't look at documents that underlay this submission, what I am probing is why you think you weren't allowed to see those documents, that they were somehow confidential. You are asked to support this recommendation, you do support it correct?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: I understand your evidence to be you did it on the basis of this document alone and not the underlying documents.

20 **MS PHUMEZA NHANTSI:** Agreed.

ADV KATE HOFMEYR: How could it possibly be that if you wanted to raise a question, I'm not sure about this or there's a point here I want to follow up on, you wouldn't be allowed to see the submissions.

MS PHUMEZA NHANTSI: I think if I would have a question, I think I was going to be – the Chair of that committee would give me clarity, I

don't think I'd be allowed to see the supporting documents, I've never probed it Chair.

ADV KATE HOFMEYR: So you don't know, you don't actually know as a matter of fact that you are not allowed to see those documents?

MS PHUMEZA NHANTSI: I was told that I'm not allowed but in this instance I didn't probe any question to see the underlying documents.

ADV KATE HOFMEYR: Who told you that?

MS PHUMEZA NHANTSI: In procurement I think it's a general understanding at SAA that you don't meddle with – to the extent that I
10 was told that if you sit in those committees, one you sign the confidentiality agreement, secondly the members of those committees they leave the documents. If I'm the Chair, let's say for argument sake I'm the Chair of BAC the other members of BAC, when a decision or an evaluation is done they leave all the documents to the Chair of BAC.

ADV KATE HOFMEYR: Yes but that wouldn't – from what I understand of your description preclude you from looking at the documents yourself, to satisfy yourself before you recommend the...(intervention).

MS PHUMEZA NHANTSI: If I ask for it maybe.

20 **ADV KATE HOFMEYR:** Thank you. I'd then like to just ask you BnP gets appointed as a habit finally on the 20th of April 2016, does that accord with your recollection?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: And can you tell us, how soon thereafter you start engaging with BnP Capital?

MS PHUMEZA NHANTSI: Chair I would not know the exact date but it would be three weeks, two weeks after they received the letter of award.

ADV KATE HOFMEYR: And I understand from your previous evidence, at no point since BnP Capital was in fact appointed did you have any face-to-face interactions with Mr Mahlangu, correct?

MS PHUMEZA NHANTSI: Correct Chair.

ADV KATE HOFMEYR: Every piece of correspondence, well formal piece of correspondence from BnP Capital however came from Mr
10 Mahlangu, didn't it?

MS PHUMEZA NHANTSI: Yes via email Chair.

ADV KATE HOFMEYR: Did that not concern you, did you not think you should engage with Mr Mahlangu directly?

MS PHUMEZA NHANTSI: Not at that time Chair, as I said certain things were overtaken by events because we appointed the transactional advisor 20 March and in 20 April FDC – the funding from FDC fell off the table, so we were then busy ensuring that we were going to get money to settle the loans that were going to mature in the next two months. So in that one month, no it didn't bother me because
20 there was correspondence and also I'd like to highlight to say, I think I had one discussion with Mr Mngadi on this, as I'm saying I saw him as part of the team of BnP.

ADV KATE HOFMEYR: I'd like to follow that up but before then I just want to get the chronology right, you correct in some respect to refer to 20 March as a relevant date to the appointment of transaction advisor

but as a matter of fact, as I understand Mr Mahlangu's evidence that was an incorrect date on the appointment of the transaction advisor, the transaction advisor was only in fact, appointed on the 20th of April and that must be so because your processes involving SMG only occurred later in April, do you want to have a look at it, just to satisfy yourself?

MS PHUMEZA NHANTSI: Yes please.

ADV KATE HOFMEYR: If you just go back to the page we were at 427 you'll see the submission from Global Supply Management that you
10 relied on to recommend the appointment of BnP Capital – sorry I'll wait for you to get there, 427, its date 15 April.

MS PHUMEZA NHANTSI: No you're right Chair sorry that 20 March was a typo and it was corrected 20 April.

ADV KATE HOFMEYR: Correct, I just wanted that to be clear, so it's common cause that they were appointed on the 20th of April, you said that it didn't worry you that you weren't having engagements with Mr Mahlangu but you did say you had interactions with Mr Mngadi who you understood to be part of BnP Capital is that right?

MS PHUMEZA NHANTSI: Agreed Chair but it would be after the
20 appointment of...(intervention).

ADV KATE HOFMEYR: Indeed so some point after 20 April, you don't meet with Mr Mahlangu but you do meet with Mr Mngadi.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: And you understood Mr Mngadi to be a representative of BnP Capital, is that correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Did it concern you at all that he was employed at Nedbank at the time?

MS PHUMEZA NHANTSI: I asked myself that question Chair but I don't recall it asking him that question.

ADV KATE HOFMEYR: Because you were aware Nedbank was a competitor bidder, weren't you?

MS PHUMEZA NHANTSI: Yes I was aware because it's on the submission.

10 **ADV KATE HOFMEYR:** Yes.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: So did you raise with him, how he could possibly come up in BnP Capital?

MS PHUMEZA NHANTSI: I vividly remember asking him Chair, but I the reason why, I'm reluctant to say I did because I don't remember his response, I think he just laughed on it but I did as, how come you are in Nedbank and also you are at BnP but I don't have a firm – and I didn't ask it on WhatsApp so I don't have a proof.

ADV KATE HOFMEYR: Do you accept that his appearance in BnP
20 Capital despite being employed at Nedbank who was a competitive bidder would be irregular.

MS PHUMEZA NHANTSI: I accept that Chair.

ADV KATE HOFMEYR: But you did not probe it further with him at the time?

MS PHUMEZA NHANTSI: No I didn't Chair.

ADV KATE HOFMEYR: Despite knowing of this conflict in him occupying both positions?

MS PHUMEZA NHANTSI: I did not Chair. One of the reasons, I think Chair, no I didn't I remember I asked him but I think the decent thing that I should have done perhaps was to ask the Chairperson of the Board, because he was (indistinct) but I did not Chair probe it further.

CHAIRPERSON: But I might have missed something, did you say you did ask him, how come you are in both places?

MS PHUMEZA NHANTSI: Yes but I think he just laughed it off, he
10 didn't give me a concrete answer.

CHAIRPERSON: Yes but when you asked him, it must have been because you found it strange isn't it?

MS PHUMEZA NHANTSI: Yes because he was – I found it strange, I asked – I found it strange Chair because I think there was one meeting that we had with the banks where...(intervention).

CHAIRPERSON: He was there.

MS PHUMEZA NHANTSI: He was there with Nedbank.

CHAIRPERSON: And now he was also involved with BnP?

MS PHUMEZA NHANTSI: Yes Chair.

20 **CHAIRPERSON:** You say that you think you – maybe you should have asked the Chairperson about this, is that what you just said?

MS PHUMEZA NHANTSI: Yes I think Chair if I had the time, and it's not an excuse, because we had loans maturing, certain things I wouldn't have followed them through because the decent thing to do, I think would have been to follow-up with the Chairperson and get a

proper answer that why is he involved in Nedbank and also in BnP.

CHAIRPERSON: Or maybe even – not even with the Chairperson, maybe you should have insisted on a clear answer from him.

MS PHUMEZA NHANTSI: Yes I agree...(intervention)

CHAIRPERSON: To say, I asked you a question how can you be in both, at Nedbank and BnP, so - because this was something that was raising some conflict of interest.

MS PHUMEZA NHANTSI: Yes Chair, I agree and I should have probed it further yes.

10 **CHAIRPERSON:** Okay.

ADV KATE HOFMEYR: Why would you have gone to the Chair about it?

MS PHUMEZA NHANTSI: Because he's the one who introduced me – she is the one who introduced me and gave the numbers of Mr Mngadi.

ADV KATE HOFMEYR: And as I have your evidence you were also aware of him engaging with her in the background and then coming to you with feedback about what she had or had not said to him, is that correct?

MS PHUMEZA NHANTSI: Come again Chair.

20 **ADV KATE HOFMEYR:** I understand later in your statement, particularly when you deal with the WhatsApp communications you were aware that Mr Mngadi was dealing with the Chairperson, they were having conversations about what was happening and then he was feeding back to you some of the input from those conversations, is that right?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: So he was fairly termed the Chairperson's person, is that right?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: But you were concerned about this conflict you asked him but you did not take that further?

MS PHUMEZA NHANTSI: I did not take it further Chair.

ADV KATE HOFMEYR: Did you not think it was a reason to sound an alarm and say we cannot continue with the engagement with BnP
10 Capital because they're represented by a person who's in a conflicted position?

MS PHUMEZA NHANTSI: At that point no Chair.

CHAIRPERSON: We have had a few occasions in your evidence where you are able to admit that you should have raised an issue and maybe followed it up – raised an issue but you didn't do so in circumstances where you should have, one, we had the meeting of the Board where you should have raised certain issues before the decision was taken, yet you didn't, I don't know if there is another one but this is another one where there's a conflict involving Mr Mngadi, you do see
20 the conflict, you do raise the issue with him but you allow him to not really come out clearly and give you a clear answer and you don't take it up with anybody. Why do you think you had these situations where you should have really raised issues and taken them up but didn't why- what is – what do you think was responsible for this on your part?

MS PHUMEZA NHANTSI: On the – thanks Chair, on the first one, as

I've said I should have brought it up to the Board, one I was new in the company and I knew that I would follow the processes as we have discussed that Chair. On this one, to be honest I asked it and I didn't – I would be honest Chair I didn't take it too serious to follow-up on the conflict of interest and I don't think I have a real reason, I think at the back of my mind I just told myself that this is Dudu's person and I moved on. So on this one I don't have a real reason Chair but most importantly, as much as I don't have the real reason here Chair, the fact that Mr Mngadi was involved in this transaction, it made me to look
 10 at it with the hawk eye hence at the end I'm the one who pushed despite all the pressures that I was getting from the Chairperson that this transaction must be cancelled yes.

CHAIRPERSON: I'm not sure whether to ask you this question, but I'm going to ask you so that you know what's going on in my mind. Is it possible that maybe – I think from what we have said when you started at SAA in 2015 you had been a chartered accountant for about 7/8 hears or there about.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Is it possible that maybe this was a situation that
 20 needed somebody maybe to be much more experienced to deal with some of these challenges. I said I'm not sure whether to ask it, I'm just being honest with you, it may be that - I'm just wondering whether, faced with all of these challenges you found it easy to take up issues that you may have believed should be – or you believe should be taken up?

MS PHUMEZA NHANTSI: Also Chair, I'm not sure if I'm going to give you the right answer but let me attempt...(intervention).

CHAIRPERSON: Yes it's good if we are both not sure.

MS PHUMEZA NHANTSI: Chair looking – especially after this transaction and looking at the challenges that I faced where sometimes I felt I'm swimming against the tide, where I feel – for example, let me give a practical example, towards the end of the transaction where it was clear that BnP for example misled us as SAA where they didn't tell us that their FSB license was suspended and yet they knew that it was
10 a critical criteria and when I raised that with the Chair of the Board together with acting CEO raising those and she would insist that let's continue with them, they're going to - let's not cancel they're going to sue us and all that, perhaps maybe now, looking back, maybe juggling with the politics and juggling with the procurement processes and the policies and running the day-to-day operations Chair, without meddling with who's (African language) and all that, I think it's an easy job to do, I can still do it today.

CHAIRPERSON: Provide the translation for (African language).

MS PHUMEZA NHANTSI: The translation is whose person is this, so
20 I felt my plate was full whilst I'm juggling with loans that are maturing, I'm juggling with the procurement processes and all that but there are also underlying politics where there's certain pressures that are coming. I would then say my plate was too full, I don't want to say Chair - I don't want to say I was not the right person to do the job, but I think the politics that came about were...(intervention).

CHAIRPERSON: Were too much.

MS PHUMEZA NHANTSI: One, perhaps I would say at the end looking now after this transaction maybe I would say I was too naïve to think that all the Board members of the Board members of the institutions always act in the best interest of the company.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYR: Mr Nhantsi, I'd like to move to the decision to extend the scope of the transaction advisor to source funds, if we may and I pick this up at page 8 of your statement, paragraph 24. In
10 paragraph 24...

MS PHUMEZA NHANTSI: Yes Chair, I'm there.

ADV KATE HOFMEYR: At paragraph 24 as I have it you talk about the tele conference at which the unavailability of FDC to fund the 15billion is discussed and you record there that the Chairperson, during the tele conference that we had organised to give the Board an update on the FDC, instructed and recommended that we approach the same service provider that was appointed as a transaction advisor to source the funding for SAA and then – that is when I made the error at the beginning we get that Board resolution, if we can just go to it you'll find
20 it in Ms Stimpel's bundle, so that's DD1B, it's the first document there, It's page 441.

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: You'll see that is a Board resolution as of 21 April to approve the extension of scope of a transaction advisor to include sourcing of funding for 15billion for South African Airways, do

you see that?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: You make the point in your statement that there's no debate about who this transaction advisor is at the time it was BnP Capital wasn't it?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: So when the Board passed this resolution on the 21st of April they are approving the extension of scope of BnP Capital to source funds for 15billion for South African Airways, is that
10 right?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: So a transaction advisor was actually not correct it was the – it was a particular transactional advisor they were talking about, BnP in other words.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Now at this point, did you raise your concerns about Mr Mngadi's conflict because at this point BnP Capital stands to earn 2.6 million from SAA but if their scope is extended to source funds
20 for South African Airways, there's a possibility that, that increases in magnitude, hugely. Did you raise the concern about his conflict and his continued involvement in BnP?

MS PHUMEZA NHANTSI: I did not Chair.

ADV KATE HOFMEYR: Do you regret that now?

MS PHUMEZA NHANTSI: I do, deeply.

ADV KATE HOFMEYR: Because they stood to benefit in the order of – we'll come to the figures 325million if all had gone according to plan.

MS PHUMEZA NHANTSI: Having what I've heard with the testimony especially of Mr van der Merwe, I do regret it Chair.

ADV KATE HOFMEYR: Well let's see what happens after the 21st of April because that decision is taken, but you again, then follow it with a recommendation for the same decision that was taken.

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Yes and you'll have the sense of the question
10 there, whether that isn't the incorrect order in which these events should take place, do you accept that it is?

MS PHUMEZA NHANTSI: It is in the order, my understanding Chair because the Board resolution is approving that we extend the scope of transactional advisor but internally we had to do – we had to follow the procurement process.

ADV KATE HOFMEYR: But you did go back to the Board for the decision that they'd taken didn't you?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: And insofar as extension of scope is
20 concerned, I would just like to pause on that, the only reason BnP Capital was a service provider to SAA at this point was because of the transaction advisor services it had been procured – contracted to perform, correct?

MS PHUMEZA NHANTSI: Correct Chair.

ADV KATE HOFMEYR: It was a critical criteria of that bid that they

have a FSP license, wasn't it?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: So I want to suggest to you that the extension would only have been lawful if they maintained that requirement, do you accept that?

MS PHUMEZA NHANTSI: Agreed Chair.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: This extension of the scope did it mean that they were the ones who were now were required to seek and find the
10 15billion rand?

ADV KATE HOFMEYR: Yes Chair, if you allow me just briefly on the process that we just discussing with Ms Hofmeyr, the Board, on the 21st of April we gave them an update that FDC can no longer provide the funding to SAA and with a concern and the concern of the loans maturing, the Board then approved that we extend the scope to the already approved transactional advisor to go source the funds but we didn't immediately do that Chair, we followed the process. Again I engaged with the procurement team to understand if – how can we implement the Board resolution but also to be in line with the
20 procurement process. There are clauses on the supply chain Chair, one is the emergency, the second one is the confined bidding. When we engaged those two, this transaction to be particular because even on Ms Stimpel's submission on the 27th of November, she highlighted how urgent the funds are and should the company not...(intervention).

CHAIRPERSON: Yes let me interrupt you, she probably will take you

there, the reason why I asked for clarification in regard to whether this resolution of the Board meant that BnP should find the funds as well, was that the being transactional advisors I would have thought that the roles should not be combined in one entity namely of looking for funds, getting the funding providing the funds and advising on that transaction, do I misunderstand something?

ADV KATE HOFMEYR: No Chair there's nothing that prohibits them from providing the funding and also advising on which loans to be paid, there's nothing that excludes them to do that, there's no conflict in that.

10 **CHAIRPERSON:** But if they've got the funds, aren't they going to want you to take the funds that they've got and not somebody else's funds?

MS PHUMEZA NHANTSI: In this case Chair this is exactly what happened especially with the emergency and the confined bidding. We did not go out on an open tender because of urgency of the funds. So the board resolution we requested them to go get the funds.

CHAIRPERSON: But ordinarily would it not be seen as undesirable in terms of maybe governance to say if you are going to advise on a transaction of obtaining funds you should be different from the person
20 who must look for the funds because you have an interest in your client obtaining the funds that you have got and you might not be objective in advising.

MS PHUMEZA NHANTSI: No Chair ordinarily if we went out on an open tender they would be eligible to apply as well if they have capacity to source – to give SAA the funding. The roles are different.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Ms Nhantsi can I just understand. At this point in time had BNP delivered at all on its transaction advisor services mandate?

MS PHUMEZA NHANTSI: No, no Chair.

ADV KATE HOFMEYR: So why were you comfortable with them now being charged with more work from SAA including sourcing of funds?

MS PHUMEZA NHANTSI: Firstly what I did after the board resolution I engaged with them requesting and checking if they have capacity to
10 source the funds.

ADV KATE HOFMEYR: And who were those engagements with?

MS PHUMEZA NHANTSI: They were – I wrote an email to Daniel Mahlangu.

ADV KATE HOFMEYR: But you never spoke to him? Did you engage with Mr Mngade about this?

MS PHUMEZA NHANTSI: I think I did Chair.

ADV KATE HOFMEYR: If we could go back to the 21st April because that is the board resolution.

MS PHUMEZA NHANTSI: Yes.

20 **ADV KATE HOFMEYR:** Right. What is interesting from the evidence of Mr Van Der Merwe is that on the 22 April so just the day later BNP Capital start engaging with him about sourcing funds that is when Grissag appears again in this funding endeavour of SAA. Did you inform BNP of the decision taken on the 21 April?

MS PHUMEZA NHANTSI: No not immediately. We first followed the

procurement process to check with BAC and all that.

ADV KATE HOFMEYR: Yes.

MS PHUMEZA NHANTSI: I did not immediately inform [indistinct].

ADV KATE HOFMEYR: Because you went through a whole process.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: As I have it that eventually takes you to the 24 May when the board again approves.

MS PHUMEZA NHANTSI: Yes

ADV KATE HOFMEYR: That which they previously approved that
10 happened on the 24 May and as I have the evidence on the 25 May a
letter congratulating BNP on being selected to source the funds goes to
BNP, does that accord with your recollection?

MS PHUMEZA NHANTSI: Yes, yes Chair.

ADV KATE HOFMEYR: So if you did not tell BNP on the 22nd or the
21st April that they had already been appointed to source funds who do
you think might have done that?

MS PHUMEZA NHANTSI: Chairperson of the board might have done
that.

ADV KATE HOFMEYR: Do you know it for a fact or do you speculate?

20 **MS PHUMEZA NHANTSI:** I speculate because Mr Mngade is his
person.

ADV KATE HOFMEYR: I would then like to just move to the question of
the emergency procurement.

MS PHUMEZA NHANTSI: Yes

ADV KATE HOFMEYR: You deal with this Ms Nhantsi at page 10 of

your statement and you in particular from paragraph 31 that is where you talk about the provisions of the SCM Policy that allowed an emergency procurement in exceptional circumstances.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: You will be aware I take it that that particular clause of the SCM Policy has a proviso because it says that bad planning will not be a justification for emergency procurement, are you aware of that provision?

MS PHUMEZA NHANTSI: I am aware of it Chair.

10 **ADV KATE HOFMEYR:** And I then would like to just return to some of the evidence we traversed earlier.

MS PHUMEZA NHANTSI: Hm.

ADV KATE HOFMEYR: Would you accept that the urgency that is created by April if there was indeed urgency 2016 is a product of not having determined early on in January that FDC was a no go?

MS PHUMEZA NHANTSI: Come again

ADV KATE HOFMEYR: Okay in January 2016.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: It could have been determined that FDC had no
20 legal capacity to enter into this transaction, could it not?

MS PHUMEZA NHANTSI: No due diligence was still going to be part of the process that the company was embarking on.

ADV KATE HOFMEYR: Yes but National Treasury had told you on the 6 January that FDC did not have the mandate, right?

MS PHUMEZA NHANTSI: I never received any formal communication

from National Treasury telling me...

ADV KATE HOFMEYR: No but you had a meeting with Ms Stimpel that you have confirmed already in your evidence in which that was conveyed to you that National Treasury's view was that it was beyond the mandate of FDC to fund this?

MS PHUMEZA NHANTSI: Agree except that the formal communication between National Treasury and SAA is via the chairperson of the board. The National Treasury will write to SAA so one of the reasons why perhaps we engaged and we did not stop at that time National Treasury
10 never wrote to us and informed us that FDC does not have a mandate.

ADV KATE HOFMEYR: But you never followed up in SAA to get a legal view on that – a formal legal view, did you?

MS PHUMEZA NHANTSI: Yes I did not get a formal legal view but I got a view.

ADV KATE HOFMEYR: If you had determined in January that FDC did not have the mandate then you would not have been in the urgent situation you were in April would you?

MS PHUMEZA NHANTSI: Yes I would not be.

ADV KATE HOFMEYR: I think you agreed with me there is that right?

20 **MS PHUMEZA NHANTSI:** About what I am not...

ADV KATE HOFMEYR: I just – there might – I might – there might have been a negative in my question so I just want to be clear.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: If you had established in January that FDC did not have the mandate to fund this transaction you would not have had

to get to April to urgently procure sourcing of funds, correct?

MS PHUMEZA NHANTSI: Yes except that I agree except that we were following the processes to ensure that

1. We implement a board resolution and
2. National Treasury if they felt strongly about it they could have written to SAA to say FDC does not have a mandate. So I engaged with FDC and at that point in time I still believed that FDC had a mandate. So...

ADV KATE HOFMEYR: So FDC did not tell you about their meeting
10 with National Treasury in December of 2015 where they were told they did not have the mandate?

MS PHUMEZA NHANTSI: No I am not aware of the meeting.

ADV KATE HOFMEYR: Okay. You did not take steps though in January to clarify the legal position, correct?

MS PHUMEZA NHANTSI: I got the discussion of – with the legal person.

ADV KATE HOFMEYR: Okay but by April it is urgent because you have lost out on three months where you could have gone to the market for sourcing funds, correct?

20 **MS PHUMEZA NHANTSI:** Chair perhaps if you can go back as well to the – and check how much time did SAA take during the time then they recommended Seacrest because it is not three months Chair I think it is longer than that. So the procurement process even if we went to the market is not three months.

ADV KATE HOFMEYR: Sorry my three months is January to April

because I am saying you could have done something in April to realise that FDC was not available and then you could have used those three months up to April to go to the market and see if there was another provider for a sourcer of funds?

MS PHUMEZA NHANTSI: Yes I agree...

ADV KATE HOFMEYR: You accept that?

MS PHUMEZA NHANTSI: I agree with you and I am also saying I am not sure if three or four months is enough to start the tender process from the beginning up until the end.

10 **ADV KATE HOFMEYR:** Well...

MS PHUMEZA NHANTSI: Hence my reference is Seacrest.

ADV KATE HOFMEYR: Let me help you with that. The previous tender process.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Where Seacrest was recommended took a week.

MS PHUMEZA NHANTSI: No, no, no the advert – the advert and everything a week?

ADV KATE HOFMEYR: Hm.

20 **MS PHUMEZA NHANTSI:** Oh.

ADV KATE HOFMEYR: It opened – we can go to the document but we went through it with Ms Stimpel it was one of the concerns she had at the time.

MS PHUMEZA NHANTSI: Hm.

ADV KATE HOFMEYR: I think it was very short let me just get it for

you.

MS PHUMEZA NHANTSI: That cannot be.

ADV KATE HOFMEYR: Apologies I just have to move in these documents. No apologies it was two weeks I stand corrected on a week. The week actually related to the transaction advisor. If you go to DD1[a].

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: You will find it at page 220.

MS PHUMEZA NHANTSI: Yes Chair.

- 10 **ADV KATE HOFMEYR:** You have that. So you will see that when the request for long term funding went to the banks as well as all of those entities that the board members had required beyond the list – I can see you doing the calculation I also was too adventurous on two weeks I think the start date was 23 September and the closing date was 13 October so that would be in the order of three weeks, are you happy with that?

MS PHUMEZA NHANTSI: Chair I am...

CHAIRPERSON: She will get the number of weeks much better than you and I could get she is a chartered accountant.

- 20 **ADV KATE HOFMEYR:** Indeed.

MS PHUMEZA NHANTSI: No Chair I am counting in fact the date that it went to the bidders on 22 September and the submission recommending to the board was on the 27 November. I think...

ADV KATE HOFMEYR: Oh I see.

MS PHUMEZA NHANTSI: I am not talking about ...

ADV KATE HOFMEYR: The period in which you could [indistinct]

MS PHUMEZA NHANTSI: It was advertised.

ADV KATE HOFMEYR: I understand.

MS PHUMEZA NHANTSI: Yes, yes.

ADV KATE HOFMEYR: Right so there we have – let us take it then your fuller period.

MS PHUMEZA NHANTSI: Ja.

ADV KATE HOFMEYR: You have it is – the opening is 23 September.

MS PHUMEZA NHANTSI: Ja.

10 **ADV KATE HOFMEYR:** And then you will recall the culmination of it is a representation to the board on the 27 November/

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: So that is two months give or take a few days.

MS PHUMEZA NHANTSI: That is two months yes.

ADV KATE HOFMEYR: So you could have done it between January and April?

MS PHUMEZA NHANTSI: Yes Chair except that on this because we fully thought that we were going to get money from FDC I would not really take responsibility and say we were negligent on this. We
20 thought strongly that FDC was – would give us the funding and also being quoted the section that they are – that makes them to do – to act as an agent on the FDC Act I believed that we were going to get the money.

ADV KATE HOFMEYR: Ms Nhantsi but you did not go and get that legal due diligence that the member of your legal department said was

required on the 11 December 2015 did you?

MS PHUMEZA NHANTSI: Legal department was doing its own work and I am not sure how far they were on the process. This one I contacted – after the – my meeting with Ms Stimpel I contacted the CFO to ask if indeed what section allows them to be able to give SAA the funding of 15 billion hence I said I ask the permission from the Chair to say using layman's language he told me that they are allowed to think outside the box and bring monies to the Free State Province.

ADV KATE HOFMEYR: But Ms Nhantsi in terms of proper process you
10 would have needed your legal department's formal view on this to sign off on the legal capacity of FDC would you not?

MS PHUMEZA NHANTSI: Yes. Chair they were still busy with their procurement. Ursula Fikelepi was still busy with the due diligence.

ADV KATE HOFMEYR: So did you follow up regularly with her to establish what the legal status was of FDC?

MS PHUMEZA NHANTSI: No I did not follow up regularly.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Were you going to go back to them about the issue of due diligence if the information that came through was not that FDC
20 was not an option?

MS PHUMEZA NHANTSI: Yes Chair definitely I was going to go back to them. Chair one thing for sure we were not going to sign an agreement with FDC without passing the due diligence.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Ms Nhantsi you signed the recommendation to

extend the scope of BNP to source funds, is that correct?

MS PHUMEZA NHANTSI: Which page is that?

ADV KATE HOFMEYR: What I am going to ask you to go to is actually in Ms Stimpel's bundle because there is one in yours but I think it is actually not the signed one.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: So let us go to bundle B of DD1 and it is page 450.

MS PHUMEZA NHANTSI: Yes.

10 **ADV KATE HOFMEYR:** Is that your signature on that page?

MS PHUMEZA NHANTSI: Yes it is Chair.

ADV KATE HOFMEYR: Thank you. Now Ms Nhantsi as I have it you actually raised the query about why you needed to sign in a situation where there was already a board decision. Can we go to that in your statement it is at page 11 paragraph 33?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: As I have it at paragraph 33 you say there: "GSM Global Supply Management through Advocate Lester gave me a confinement for that is the one we were just looking at.

20 **MS PHUMEZA NHANTSI:** Yes.

ADV KATE HOFMEYR: Before submitting to the BAC and when I asked why I should be the one to sign he stated that because the board had already approved then the CFO should sign and it was going to be a see just for noting since BAC was below the board in terms of DOA and then you say the BAC indeed noted the submission and referred it back

to the board. Do you see that?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: So is it the fact that the BAC was just noting what the board had already decided that you did not have any misgivings about it?

MS PHUMEZA NHANTSI: What do you mean by misgivings?

ADV KATE HOFMEYR: Well otherwise I suspect it is part of the reason why you were saying to him why must I sign it if the board has already taken the decision, right?

10 **MS PHUMEZA NHANTSI:** Not really I was more asking why is this form not signed by GSM why me?

ADV KATE HOFMEYR: Okay and his explanation was it is just going to go to BAC for noting so that is not an issue, correct?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Do you ...

CHAIRPERSON: Well I am sorry. Did you understand that answer that he gave you?

MS PHUMEZA NHANTSI: Chair...

CHAIRPERSON: Did it makes sense to in terms of your query?

20 **MS PHUMEZA NHANTSI:** Not really Chair more than anything I was asking why am I signing because it is just a page of a check list.

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: So I was asking why are they making me sign this and then I was told that I can sign it because the board has already taken a decision to confine.

CHAIRPERSON: Ja but I am trying to check whether that answer whether you were able to make sense of that answer in terms of the question you had put to him?

MS PHUMEZA NHANTSI: Not really Chair but I moved on.

CHAIRPERSON: But then you signed?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Because...

MS PHUMEZA NHANTSI: I signed more because I was confirming that it is for business reasons why you confining...

10 **CHAIRPERSON**: Hm because I – when I look at the capacities underneath there where you signed your position does not appear to be there, is it not or is it? In other words it is a document as I understand it at page 450 if that is where we are?

MS PHUMEZA NHANTSI: I am there Chair I am there.

CHAIRPERSON: It is a ...

MS PHUMEZA NHANTSI: I am the GM. I am the General Manager.

CHAIRPERSON: Oh you are the General Manager?

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: Oh okay then I understand. So that General is meant
20 General Manager Regional is meant Regional Manager.

MS PHUMEZA NHANTSI: Yes Country Managers.

CHAIRPERSON: And Country there is also Country Managers?

MS PHUMEZA NHANTSI: Country Manager yes. Regional Manager and Station Manager.

CHAIRPERSON: Oh okay. So your query had nothing to do with the

capacity in which you were signing it was simply on the need?

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: For anybody to sign?

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: Okay alright. Thank you.

ADV KATE HOFMEYR: Ms Nhantsi I am not going to take us there we have been through it already but one of the difficulties I have with this process again is that despite the board decision on the 21st that is followed by motivation that they take the decision that they have
10 previously taken. That is a motivation that came on the 11 May. Then there is your signing of the confinement that takes place similarly on the 11 May. And then it goes to BAC. There is one point I want to pick up with you on that though. You say it was only going to the BAC for noting, is that correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: But if we go to that actual bid adjudication committee decision record you will see that they did not note they recommended the decision be taken that had already been taken. I will take you there it is in DD1 which is Ms Stimpel's bundle B at 453.

20 **MS PHUMEZA NHANTSI:** 453?

ADV KATE HOFMEYR: Yes. Sorry it is in B you will need to be in the next file. Apologies.

MS PHUMEZA NHANTSI: Yes I am there.

ADV KATE HOFMEYR: You will see that that is the bid adjudication committee decision record of the 13 May to request for BAC support to

confine and award the contract for sourcing funds for SAA Group to BNP Capital and then you will see down the page that it is not recorded as noted it is recorded as recommended, do you see that?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: In the tick. So again we have after the fact entities within SAA confirming that the processes of going up to the board for approval are followed albeit that the board has already made this decision on the 21 April, correct?

MS PHUMEZA NHANTSI: Yes Chair to follow the processes to be
10 aligned.

ADV KATE HOFMEYR: Yes but after the fact Mr Nhantsi.

MS PHUMEZA NHANTSI: Agreed.

ADV KATE HOFMEYR: Do you accept that doing it after the fact is problematic?

MS PHUMEZA NHANTSI: Chair it is yes and no in this way. If a decision is taken by the board and we do have the responsibility to guide the board on the operational matters. Not just to take the board resolutions and implement them as they are hence we are – we are there every day. So one as much as I agree and I accept that it is a
20 board – it is within the board's ambit it does not exclude that every – all the transactions there is nowhere in the SCM where it says this is a board transaction because it is above 50 million therefore you will not follow the process. So what we are doing here on all these instances because

1. It was the first time that funding followed the procurement

process at SAA.

2. We needed to ensure that it is in line with the procurement processes. So the board yes would take a decision but we need to run it through the processes and make sure that it is aligned because at the end as the operation managers we need to be accountable. We need to say processes were followed and they were in line with the SCM Policy.

ADV KATE HOFMEYR: Ms Nhantsi just a correction. It was not the first time that it had followed procurement processes for funding recall
10 in 2015 there was an entire RFP process for funding the product of which was the Seacrest recommendation so this was the second time, correct?

MS PHUMEZA NHANTSI: I agree except that as well you look at how it started. It started the board taking a decision and recommendation and a board resolution to say go and cancel and start the process and follow the procurement process. So the board took that decision and then the management then went to do the process.

ADV KATE HOFMEYR: No but Ms Nhantsi the decision that was taken by the board in about August or September 2015 was to go out on RFP
20 and then that whole process was followed. The process was followed, they got the guidance that you speak of and then it was presented to them in December what they should do, correct?

MS PHUMEZA NHANTSI: I am not following you.

ADV KATE HOFMEYR: The board made a decision in August of 2015 that they wanted to go out on RFP for this funding.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Because prior to that point it had been done purely in a liaison with the banks correct?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Pursuant to that decision an RFP was designed, it had to be evaluated by the board.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: The board then confirmed its terms. It then went out to the market. Then bids were received. A whole evaluation
10 process was followed. A recommendation was made by the Group Treasurer on the 27 November and that served before the board on the 3 December, correct?

MS PHUMEZA NHANTSI: Agree which is the same process that I am trying to explain.

ADV KATE HOFMEYR: Yes but your evidence was that when you did it it was the first time?

MS PHUMEZA NHANTSI: Oh sorry apologies. Okay.

ADV KATE HOFMEYR: Right let us go back to the guidance of the board because I absolutely accept that boards need to be guided by
20 management and I understand that that is your justification for following this process after 21 April 2016's decision, is that correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: But how do you guide the board if you do your processes after they have made the decision?

MS PHUMEZA NHANTSI: No Chair the decision number 1 the decision

lies with the board.

ADV KATE HOFMEYR: But without any guidance. On the 21 April when that decision was taken by the board of SAA they had received absolutely no guidance from management on that question, had they?

MS PHUMEZA NHANTSI: Two things that through you Chair. Two things that could have happened Chair. On the 20 April when we received the news that FDC could no longer give the funding as management through my guidance and acting CEO we could have just kept quiet and not update the board and follow the process and see if it
 10 is practical to confine or to go out on a tender and update them at a later stage when we are done with that process. Or we could immediately arrange a telecom because this is the transaction that is in their per view could immediately engage them and say the new –news on this we are back on square one. We no longer have the funding. This is the situation right now. So either we could have on the 20 April not update the board and navigate and explore what is the possibility to get the funding or we could have – we could have done what we have done. Because what we have done in discussion and in agreement with the acting CEO was let us engage company secretary. Let us have a
 20 telecom with them and get – and update them on this.

ADV KATE HOFMEYR: Ms Nhantsi do not take issue with the updating of the board on the 20 April whenever it is. The difficulty from a procurement process point of view is that they decided on the 21 April to appoint BNP to source the funds before you had done analysis of whether the confinement could be justified, what the SCM Policy

provided, what the rate would be with BNP Capital, whether those terms were adequate to protect the financial position of SAA, correct?

MS PHUMEZA NHANTSI: Yes on the 21st we have not navigated all those options.

ADV KATE HOFMEYR: Thank you. I would then like to move to the FSP licence. Chair I note we just before four I do not know if it is appropriate to take a short adjournment?

CHAIRPERSON: Yes but I am not sure whether you may have lost in the process a point that you wanted to make.

10 **ADV KATE HOFMEYR:** Yes.

CHAIRPERSON: And I might be thinking I know what the point was but I may be mistaken.

ADV KATE HOFMEYR: It is entirely possible Chair.

CHAIRPERSON: Well maybe I will ask you a question that I wanted to ask. I still have some concern about why it was thought necessary to ask the board to make a decision that it had already made? Because we have a few of these of instances. I can understand if you are not aware that the board has already made the decision that if you dealing with a matter and you think a board decision is necessary that you
20 approach the board which you may have said was the case with regard to when in January you approached the board. But I am not sure whether each time there has been an instance out of the instances that Ms Hofmeyr has dealt with in her questions. Each time there has been an instance where you asking the board for a decision where it has already made a decision whether it was because you were unaware that

it had made a decision?

MS PHUMEZA NHANTSI: Chair it might be – this reason might – two reasons. The first one would be perhaps when the company secretary is capturing from the minutes the resolutions is not taking all the resolutions because when you go to the business and give update after the meeting that the board has resolved ABCD they want a board resolution. So if it is – if there is no board resolution we then forced to do the submission and give it back to the board so that we can have the board resolutions. So that is why I am saying it two things. Either as a
10 company we are fixated that we can do things by seeing the Round Robin – the board resolution itself or perhaps there is an improvement that is needed on the capturing of the resolutions extracting them from the minutes or from the discussions that happened in the board.

CHAIRPERSON: Are you saying that sometimes you could have a situation where you do know that the board did make a decision because you have got the minutes but you do not have a document separate document saying this is a resolution of the board and therefore on some of the occasions it may be that you asked the board for a resolution not because you are unaware that they have made the
20 decision but that you particularly want a separate document marked Resolution or something like that?

MS PHUMEZA NHANTSI: Not because Chair I want a particular – one I would be aware that a discussion was held in the board. But now when I am giving the discussion or the decision to the business feeding it back to the business for us to implement - they want a board resolution

CHAIRPERSON: No, no, no. I accept that you could have a situation where in a meeting the board discusses an issue.

MS PHUMEZA NHANTSI: Ja.

CHAIRPERSON: But does not make a decision. I am not dealing with that situation. I am dealing with a situation where a – the board has discussed an issue and has made a decision and when you read the minutes it is clear that it made a decision whether in that situation were you aware of that you would still approach the board afterwards and ask for a resolution or a decision on the matter?

10 **MS PHUMEZA NHANTSI**: Yes Chair an example is the transactional advisor Chair.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: It was discussed in the – and resolved that we need to appoint a transactional advisor on the 3 December.

CHAIRPERSON: Ys.

MS PHUMEZA NHANTSI: But it was not on the resolutions.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: So I needed a resolution hence the resubmission.

20 **CHAIRPERSON**: Yes.

MS PHUMEZA NHANTSI: So more I am saying Chair certain decisions would be taken in the – in the board meeting through discussions and there might not have been a submission from the business units and all that. So a discussion would be initiated by the board and a decision would be taken by the board.

CHAIRPERSON: Hm.

MS PHUMEZA NHANTSI: But it will not transpire when you look at the resolutions it is not there Chair.

CHAIRPERSON: So - so if you needed a decision of the board to be under the resolutions.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: In the minutes.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: If it was – it is clear from the minutes as part of – it is
10 one of the resolutions of the board then it is fine.

MS PHUMEZA NHANTSI: We will not go back. Yes Chair.

CHAIRPERSON: You would be content with that?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: You would not go back to the board?

MS PHUMEZA NHANTSI: Yes Chair because one of the – when you do the audit

CHAIRPERSON: Ja.

MS PHUMEZA NHANTSI: One of the things when you start saying the board has resolved, has approved that you must do ABC.

20 **CHAIRPERSON**: Yes.

MS PHUMEZA NHANTSI: You must have the board resolution.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: So – so where you would go back to the board is where either the minutes reflect that there was a discussion but on an

issue but there is no resolution or there was a discussion and a decision but that decision does not fall – is not reflected as part of the resolutions.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Then in that case too you would feel the need.

MS PHUMEZA NHANTSI: I will go back yes Chair.

CHAIRPERSON: To approach the board for a resolution.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: In the latter case where it was clear is the decision
10 that was taken you would not need to just go to the company secretary
to prepare a resolution because that is clear – it is clear the board took
a decision.

MS PHUMEZA NHANTSI: Latter case be...

CHAIRPERSON: You would need to go back.

MS PHUMEZA NHANTSI: Latter case being the which one Chair.

CHAIRPERSON: No, no I am just talking in general.

MS PHUMEZA NHANTSI: Mostly company secretary would not – we
have tried that but they very strict.

CHAIRPERSON: Yes.

20 **MS PHUMEZA NHANTSI:** Yes.

CHAIRPERSON: They want to go to get the approval of the board.

MS PHUMEZA NHANTSI: Yes Chair. Yes Chair.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYR: Ms Nhantsi just to...

CHAIRPERSON: Maybe we should take it at quarter past?

MS PHUMEZA NHANTSI: Indeed.

CHAIRPERSON: Is that fine unless – we will take the break at quarter past.

ADV KATE HOFMEYR: Ms Nhantsi so if a decision just to follow up lastly on the Chair's questions. If a decision had been taken at the board and you did not have a resolution yet you would just need to go and get that piece of paper recording the resolution, correct?

MS PHUMEZA NHANTSI: Yes correct.

ADV KATE HOFMEYR: You would not have to go through a whole
10 process.

MS PHUMEZA NHANTSI: No.

ADV KATE HOFMEYR: Of making submissions.

MS PHUMEZA NHANTSI: No.

ADV KATE HOFMEYR: For the decision that has already been taken.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Thank you. I would like to now move to the FSP licence issue.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Because this is something that comes up in
20 relation to BNP's appointment on an extended scope to source funds.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: You deal with this at page 15 of your statement if we can go there. Ms Nhantsi and it is really around paragraphs 50 and 51 on page 15 as I read your statement.

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: You deal with this question about their failure to have updated SAA about the fact that their FSB licence had been suspended, correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Now Ms Nhantsi I just want to clarify when you were notified that their FSP licence had been suspended? Because as I read these two paragraphs you do not actually give a date to it but you do locate it in time insofar as there was a letter from Webber Wentzel, you see that in paragraph 51 you say:

10 “Indeed a letter from Webber Wentzel acting on
 behalf of OUTA was sent to our acting CEO
 demanding that the contract not be concluded with
 BNP Capital and any intention to pay them any
 money should be put to a stop.”

You say:

 “During this time we were not planning to pay
 anything to BNP Capital. After hearing of this I
 called FSB myself and asked if BNP Capital was in
 good standing that is when I received a letter that
20 shows BNP Capital was suspended in April already
 but they failed to disclose this information.”

Do you see that?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: So if I told you the Webber Wentzel letter was dated the 7 July and I told you that that letter was dated the 8 July I

can take you to both of those would it be consistent with your evidence that that is the first time at which you were alerted to the suspension of the licence?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Okay that is fairly important because Mr Mahlangu's evidence will be that he notified you as early as the 13 May about that fact. Okay?

MS PHUMEZA NHANTSI: Yes Chair. Allow me – there is a letter when we received that letter to Mr Mahlangu that refers and say they told us
10 on the 11 – on the 13 May I responded and said they must tell us who they sent the correspondence to because we never received it.

ADV KATE HOFMEYR: Oh let us look at that then please.

MS PHUMEZA NHANTSI: Yes please.

ADV KATE HOFMEYR: Because that is something I was unaware of. If you go...

MS PHUMEZA NHANTSI: So it would be my correspondence after their letter. Firstly I would like to confirm yes it was between the 7th and the 8th July and it was the first time that we knew about their FSB licence being suspended.

20 **ADV KATE HOFMEYR:** Right.

MS PHUMEZA NHANTSI: They then with – we then wrote to them they responded and they said exactly what you saying but I am trying to navigate to your...

ADV KATE HOFMEYR: Right let me take you there. I think it is important that we maybe start with the 13 May letter.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Because that is the one that Mr Mahlangu said was when he gave you the original notification.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: You will find that in Mr Mahlangu's bundle and that is DD4 and you will find it at page 143 of that bundle. It is right towards the end under Tab 21.

MS PHUMEZA NHANTSI: Okay. Yes I am there.

ADV KATE HOFMEYR: Okay so unhelpfully often BNP Capital's letters
10 are not themselves dated so you always have to search around to see the covering email. We have not been provided with that by Mr Mahlangu we will ask him about it in the course of his evidence. But this is the letter that he says was sent on the 13 May. Is this one you recall later being shown or can you recall having received it on the 13 May?

MS PHUMEZA NHANTSI: Chair just one second.

ADV KATE HOFMEYR: Of course take your time. Can I ask you in particular to look at the last paragraph because what this letter is doing it is telling you about well an intention to suspend which I will deal with
20 questioning of Mr Mahlangu on because the FSB at that stage had not indicated an intention to suspend the licence it had in fact suspended the licence. But if you look at the last paragraph what BNP is saying is they have got another partner Creed Capital Partners who can take over their responsibilities. Do you remember getting this notification of the 13 May?

MS PHUMEZA NHANTSI: I do Chair but I am trying to locate where they are saying because I also remember that they said they informed us in May but I am trying to locate it in this specific letter.

ADV KATE HOFMEYR: No it will not be in this letter. This is the letter that constitutes informing you in May. Okay let us take Mr Mahlangu at his word that this was sent to you on the 13 May right? You will see it is the day after the date referred to in the second line because in the second line they say:

“I would like to clarify the issue of the FSB licence.”

10 **MS PHUMEZA NHANTSI:** Yes.

ADV KATE HOFMEYR:

“BNP Capital received a letter from the FSB dated 12
May 2015.”

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR:

20 “Indicating its intention to temporary suspend BNP’s
licence for a period of three months based on the
reason that according to Phase Act Section 10 the
key individual has failed to successfully complete the
first level regulatory examinations.”

It goes on and in the last paragraph it says;

“The conditions of suspension required at BNP work
with another authorised financial service provider
until it has fulfilled all its suspension conditions.
Accordingly we have engaged Creed Capital Partners

of which its licence is being attached.”

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: You see that?

MS PHUMEZA NHANTSI: Yes. Chair the reason why I was asking the date of this letter when we respond – when we wrote a letter in July.

ADV KATE HOFMEYR: Yes.

MS PHUMEZA NHANTSI: To BNP we asked them in that letter to say we never received because their letter was saying we informed you.

ADV KATE HOFMEYR: Yes.

- 10 **MS PHUMEZA NHANTSI:** On the 12 May and in our response we said we never received it can you specify and can you please give it to us and they never responded on that.

ADV KATE HOFMEYR: Right.

MS PHUMEZA NHANTSI: So it should be on my bundle.

ADV KATE HOFMEYR: I have not seen it in your bundle.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: So it will be useful if we can source this at some point.

MS PHUMEZA NHANTSI: Sure.

- 20 **CHAIRPERSON:** Well maybe we should take the tea – the break now so that could help also.

ADV KATE HOFMEYR: Indeed yes.

CHAIRPERSON: With locating any document that is necessary.

ADV KATE HOFMEYR: Okay.

CHAIRPERSON: But – shall we take ten minutes?

ADV KATE HOFMEYR: Indeed Chair.

MS PHUMEZA NHANTSI: It is ten past four we will resume at twenty past four. We adjourn.

MS PHUMEZA NHANTSI: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes may proceed.

ADV KATE HOFMEYR: Thank you Chair. Chair just to update you. We – we unfortunately were not able to source the document over the break
10 but Ms Nhantsi indicates she may well have a copy of it at home and she will provide it to us ...

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Over the course of the evening ...

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Or thereafter but I understand from Ms Nhantsi she will just give us the evidence as she recalls it ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And we can follow that up with the document.

CHAIRPERSON: That is fine.

20 **ADV KATE HOFMEYR:** Ms Nhantsi the key question is did you receive on 13 May in SAA the letter that appears as 1-4-3 in Mr Mahlangu's bundle?

MS PHUMEZA NHANTSI: Thank you Chair. No, we never received it Chair to the extent that on the letter that I will – I will circulate to the – to the investigating team later on – on the later dated 13 July chair we

even – there is a paragraph that says:

“Please note that the letter that you are talking about is saying you informed us on 12 May. We never received it. Can you confirm who did you send it to and can you provide us with a copy of that?”

So we never received the correspondence from them. This was 13 July Chair and we then gave them seven days to respond. First immediately when we received the letter for – in fact before – on the 6th Ms Hofmeyr
10 has that email.

ADV KATE HOFMEYR: Yes let us go there.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Just to aid your evidence.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: If we go in Ms Stimpel’s bundle - this is DD1B – and you turn up there page 5-7-3 which is under Tab 62.

MS PHUMEZA NHANTSI: (Coughing) sorry Chair. 5-7-3?

ADV KATE HOFMEYR: Three, correct.

MS PHUMEZA NHANTSI: Yes I am there Chair. Yes Chair.

20 **ADV KATE HOFMEYR:** Ms Nhantsi that is a letter but the email that you are referring to you will just see over the page at 5-7-5.

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: So this an email from Mr Ivan Moyo which I understand – who I understand to be a representative of BNP Capital. Is that your understanding?

MS PHUMEZA NHANTSI: That is my understanding Chair.

ADV KATE HOFMEYR: And it is sent to Ms Ursula Fikelepi and yourself. Correct?

MS PHUMEZA NHANTSI: Correct Chair.

ADV KATE HOFMEYR: Copied to Mr Mahlangu. Do you see that?

MS PHUMEZA NHANTSI: Correct Chair.

ADV KATE HOFMEYR: And on this 6 July what is being communicated to SAA in this email?

MS PHUMEZA NHANTSI: They are communicating that as BNP they
10 are in good standing. They still have – can I read it Chair?

CHAIRPERSON: Yes you may.

MS PHUMEZA NHANTSI: “Dear Ursula, we can confirm that
the funding entity has an FSB Licence and is
authorised under South African law to provide this
financial product. See attached FSB Licence.”

ADV KATE HOFMEYR: And then if you go over the page to 5-7-6.

MS PHUMEZA NHANTSI: Yes. They then attach the – the FSB Licence
of BNP and it is certified as well as – as a true copy. The date of the
certification is 23 June 2016.

20 **ADV KATE HOFMEYR:** So can I just have it. As at this date ...

CHAIRPERSON: I am sorry.

ADV KATE HOFMEYR: Apologies Chair.

CHAIRPERSON: I am looking for the certificate.

ADV KATE HOFMEYR: Right at the bottom.

CHAIRPERSON: Oh okay. Right at the bottom.

ADV KATE HOFMEYR: Got it.

CHAIRPERSON: Ja, certified by a Commissioner of Oaths. Is that right?

ADV KATE HOFMEYR: Yes as a true copy of the original.

CHAIRPERSON: As a true copy of the original. Okay.

ADV KATE HOFMEYR: So ...

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Let me just be clear on the evidence. On 6 July you receive communication from BNP Capital in which they say
10 they have a FSB Licence and the licence that is attached is the one we have just looked at. So there is no suggestion in that correspondence that anything has been suspended. Correct?

MS PHUMEZA NHANTSI: Yes. In fact Chair – allow me on page 5-7-4.

ADV KATE HOFMEYR: Hm.

MS PHUMEZA NHANTSI: The email from Ursula Fikelepi to myself. It is saying:

“Dear Phumeza, please confirm that the lender has
FSB Licence and is authorised under South African
law to provide this financial product. Please also
20 send us a copy of such licence as well as confirmation from the FSB and other applicable regulators of the latter’s good standing.”

So this is their response to this question that has been asked by Ms Fikelepi and they are confirming on the email of Irvin Moyo they are confirming and they attaching the FSB Licence and they are

confirming a good standing.

ADV KATE HOFMEYR: And then – so that is 6 July. Then as I have the chronology on 7 July you get the OUTA or the Webber Wentzel letter ...

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: And then if you go back to 5-7-3 you have a letter that is dated 8 July that is at 5-7-3.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: But – I am sorry. Before we get there when you were
10 dealing Ms Nhantsi with the letter at five – page 5-7-4 – the email from – did you say it is Ursula?

MS PHUMEZA NHANTSI: It is Ursula Fikelepi.

CHAIRPERSON: Oh okay, Ursula Fikelepi. She says to you – she is asking you to send them a copy of the licence ...

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: And says:

“...as well as confirmation from the FSB and other
applicable regulators of the lenders good standing.”

That suggests that what they want to know apart from just saying
20 seeing the licence they want to know whether that licence is still in order. It is operational. It can be relied upon.

MS PHUMEZA NHANTSI: Agreed Chair.

CHAIRPERSON: Now this was being sent to you.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Is your – are you suggesting that when BNP sent the

letter to which you have just referred or the email from Moyo that they were aware that what was required included something that said BNP was in good standing with FSB?

MS PHUMEZA NHANTSI: I would say so Chair because on the same email on page 5-7-4 ...

CHAIRPERSON: Ja.

MS PHUMEZA NHANTSI: Ivan from BNP is copied.

CHAIRPERSON: Oh, okay.

MS PHUMEZA NHANTSI: Yes.

10 **CHAIRPERSON:** Okay. That is what I wanted to establish.

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: So they get asked for that confirmation on the 6th. Less than an hour later - I have it in time – they provide that answer that we see at 5-7-5 attaching the copy of the licence that we have looked at. The next day you get the query from Webber Wentzel and then if we just go back to 5-7-3 that is the letter that I understand came to you on 8 July 2016. Can you confirm that?

MS PHUMEZA NHANTSI: Yes. It did Chair.

20 **ADV KATE HOFMEYR:** Chair this letter bears a striking resemblance to the one of 13 May except that there are some important difference. I do not propose to deal with them with Ms Nhantsi. We will deal with them with Mr Mahlangu.

CHAIRPERSON: Okay that is fine.

ADV KATE HOFMEYR: But as you have the facts Ms Nhantsi you did

not receive 13 May letter. Even on 6 July you were told by BNP that they had a valid FSB Licence ...

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: And it is only on 8 July that that is corrected?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Thank you. I would then like to deal with the success fee – if we may.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: The success fee is the next decision in the
10 continuum of decisions.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Because we have looked at FS – the FDC. We have looked at transaction advisor appointment. We have looked at sourcer of funds appointment and the next thing that happens after BNP is appointed as a sourcer of funds on 25 May 2016 is on that very same day they write a letter to SAA asking – apologies – I am not doing the cancellation fee yes.

I am doing the success fee. Let us deal with – when I say success fee I mean the fee that they were going to charge for sourcing
20 these funds.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: There is a debate between you and Ms Stimpel about the appropriateness of a 1.5 percent fee. You are aware of that?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: As I read your statement Ms Nhantsi and we

can go to page 19 of it - if we may.

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: You will see at paragraph 64 on that page you are dealing with the justification of the 1.5 percent which was the negotiated rate that had been agreed with BNP. Correct?

MS PHUMEZA NHANTSI: Correct Chair.

ADV KATE HOFMEYR: And you are also answering here - as I understand your statement – the accusation that was made in Ms Stimpel’s statement that despite her giving you information from the
10 banks that they would have sourced these funds for much less. You did not take that information to the Board. You are aware of those allegations?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: As I understand your paragraph 64 what you are saying there is you were entitled to discount the quotations that you received from Ms Stimpel because – and I am reading from the middle of that paragraph:

“The difference between a request you had made
...”

20 We will come to that request.

“...and that of Ms Stimpel was that she was asking
on a hypothetical point of view and I was focusing
on a factual point of view.”

Do you see that?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Was that your reason for discarding the alternative quotes that she presented to you?

MS PHUMEZA NHANTSI: Yes – Chair allow me to – to just give further information there. I said with Ms Stimpel – now we are talking the success rate?

ADV KATE HOFMEYR: Yes.

MS PHUMEZA NHANTSI: I – I think it was 6 May.

ADV KATE HOFMEYR: Yes.

MS PHUMEZA NHANTSI: We discussed and in contrary to – to her
10 statement as well where she said I gave her a submission to sign and she refused that had 3 percent. I never gave her a submission but what I did was the discussion with her to say I engaged with SNG – Sizwe Ntsaluba Gobodo Corporate Finance and the – I asked for the – the industry norm.

They said it is two to 3 percent. So she told me that 3 percent is high. I then asked Ms Stimpel to go and do the analysis and – and revert back to me. Ms Stimpel was aware of the – of the urgency of – of these funds that are needed for the company to settle the loans. She told me that she is going away on leave and she would ask
20 Mr Kleyn to do the analysis which – which I agreed.

On the day - perhaps let me because she said it on – on the public that she made it as if Mr Jacob Zuma when he went to SAA he was having a meeting with me. I would like to put it on record that Chair Mr Jacob Zuma when he went to SAA he went to address the entire employees of SAA.

So there was no way I could not have attended because even the Board Members were there. That is number one. Secondly, Mr Kleyn did not do the analysis and we forged ahead because of the urgency that we had of the loans. We prepared the documentation starting from BAC. As you have said we followed the processes. She came back and wrote to me...

ADV KATE HOFMEYR: Ms Nhantsi I am sorry to interrupt you there but I would just like to ask a follow up question in the chronology.

MS PHUMEZA NHANTSI: Okay.

10 **ADV KATE HOFMEYR:** Right. You meet with her on 6 May?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: She says she is going on leave and she is going to get Mr Kleyn to do these alternative quotes for you?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: You say he did not produce them?

MS PHUMEZA NHANTSI: No.

ADV KATE HOFMEYR: Did he – did you follow up with him?

MS PHUMEZA NHANTSI: I have asked Mr Kleyn. He said he has done anything.

20 **ADV KATE HOFMEYR:** Was it not very important for you to get some alternative quotes at that point? Should you not have instructed him to do so?

MS PHUMEZA NHANTSI: Chair I – I had a – the reason why I – I asked for – for SNG Corporate Finance on the submission that Mr Kleyn had – sorry – Ms Stimpel had on the 27th. The famous submission –

27 November. There was a list of – of bidders and potential bidders and a list of the ones that have responded and the others that have not responded.

The financial institutions specifically the ones that she requested some never responded some did not show up. Some were given the rates of – of 7 percent and all that. So I felt there is no need to go and probe the bank further because what she has done is to just engage the banks and the same banks that last week she did testify in saying there are more cautious.

10 They cannot – they will not put all their resources in one pot. So the – I could not ask the banks and two, the reason why I did not engage further when she came back the hypothetical quotes is because those were hypothetical quotes and to quote one from RNB it even said without taking into account other information hypothetically this is the rate.

So the – the rates that Ms Stimpel got from the banks needed some work to be done for – for those rates to be compared to the actual rates.

ADV KATE HOFMEYR: I would like – if I may – just to break that down
20 a bit. I had not jumped yet to 20 May which is when you got the hypothetical quotes.

MS PHUMEZA NHANTSI: Okay, sorry.

ADV KATE HOFMEYR: We are still in about 11 May or thereabouts.

MS PHUMEZA NHANTSI: Okay.

ADV KATE HOFMEYR: Your submission to the Board was on 18 May.

Correct?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Right. So what I am interested in is the dates between 6 May and 18 May when Ms Stimpel leaves to say I am going to get you some alternative quotes.

MS PHUMEZA NHANTSI: Huh-uh.

ADV KATE HOFMEYR: She leaves it to her Deputy to do so.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: He does not do so.

10 **MS PHUMEZA NHANTSI:** Huh-uh.

ADV KATE HOFMEYR: I am interested in why you did not seek further quotes at that point. It is not relevant to what you do get from Ms Stimpel at the time.

MS PHUMEZA NHANTSI: Huh-uh.

ADV KATE HOFMEYR: Why are you not going for more than the SNG – it is around two to 3 percent conversation that you had?

MS PHUMEZA NHANTSI: Chair the reason why I did not go out for more in fact I thought I did very well because when I sat with Ms Stimpel on 6 May SNG told me that the – the going rate is two to 3
20 percent and the rate that I negotiated with BNP was 1.5 percent.

ADV KATE HOFMEYR: So your view was you needed no more than that?

MS PHUMEZA NHANTSI: My view was 1.5 percent is even less than the – the minimum of – of the industry norm and – and also high level calculations were once other factors are taken into account on her

hypothetical quotes – allow me to link them.

ADV KATE HOFMEYR: Hm.

MS PHUMEZA NHANTSI: On her hypothetical quotes it would go to the same rates.

ADV KATE HOFMEYR: Did the information you receive from SNG give you clarity as to what the industry norm was or what SNG would charge?

MS PHUMEZA NHANTSI: The – they gave me the industry norm because Corporate Finance at SNG they do deal with these kinds of transactions. So SNG itself does not give funding but they get involved in the advisory of – of these kinds of transactions (intervenes).

ADV KATE HOFMEYR: And they also source funds. Do they not?

MS PHUMEZA NHANTSI: They also assist the companies in sourcing funds.

ADV KATE HOFMEYR: Which is the exact position that ...

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: That BNP would occupy here?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Mr Fonya is the person you dealt with at SNG.
20 Is it not?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: You included a statement of his that was unsigned in your evidence. Did you not?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: You are aware that the Commission followed up

with him?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: About that statement ...

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Because an unsigned statement we needed to explore further.

MS PHUMEZA NHANTSI: Agree.

ADV KATE HOFMEYR: You have been sent a copy of the affidavit that he provided for the Commission. Correct?

10 **MS PHUMEZA NHANTSI:** Correct.

ADV KATE HOFMEYR: He says in that affidavit that – let us get it Chair - if we may - at page 3-1-4 of your bundle which is DD2.

CHAIRPERSON: 3-1-4?

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Right towards the end.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: I would like to pick it up at paragraph 8. He
20 says at paragraph 8:

“During 2016 ...”

She there is a reference to you.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: “...called me one day on the
telephone. I was in the office. I do not recall

precisely when this was in 2016 but I can confirm that it was before the news broke in the media about the BNP transaction with SAA.”

Chair just for reference that only occurs later in July.

“The phone call did not last more than five minutes. She asked me what SNG would charge to source funds for SAA on an urgent basis. I responded that transactions for sourcing funds can range between two to three percent of the transaction depending on the size of the deal.”

10

11:

“She did not give me further details about the transaction or funding required by SAA.”

Ms Nhantsi do – do you accept that what Mr Fonya understood you to be asking was what SNG would charge to source the funds?

MS PHUMEZA NHANTSI: I asked for the industry norm.

ADV KATE HOFMEYR: Do you agree that that is not consistent with what he says you asked him?

20 **MS PHUMEZA NHANTSI:** (Witness reading to herself).

CHAIRPERSON: Unless SNG charged industry norms.

ADV KATE HOFMEYR: I suspect they are an avid competitor in that market. So ...

MS PHUMEZA NHANTSI: Chair the call that I had with Mzuyanda I asked what would the industry norm – what would be charged in the

market for 15 billion on an urgent basis because SAA needs money in two months or I remember I said two and a half months. So he said between two to – between two to 3 percent.

ADV KATE HOFMEYR: Do you accept that that is not consistent with what he says occurred on that call?

MS PHUMEZA NHANTSI: I see Chair.

ADV KATE HOFMEYR: Right.

MS PHUMEZA NHANTSI: I note it.

ADV KATE HOFMEYR: So assuming Mr Fonya's recollection of that
10 call is accurate do you accept that if you only had the SNG rate available to you it would have made sense to at least test that in the market – get a few alternatives?

MS PHUMEZA NHANTSI: Yes if – if my understanding at the time was this is SNG rate. My understanding was this is the industry norm which is why on my submission as well it talks about the industry norm.

ADV KATE HOFMEYR: Then let us move forward to 20 May because at that date you get "Evidence of Hypothetical Quotes" that the heading on the email – correctly so – from RNB and then later Absa indicating that they would charge much less than that to source these funds.
20 Ms Nhantsi why at that point did you not engage the Board and say I have come to you previously for 1.5 but I have just received the information that the banks will do this for much less?

MS PHUMEZA NHANTSI: Chair as – as I have indicated that Ms Stimpel asked the banks for the hypothetical quote.

ADV KATE HOFMEYR: Hm.

MS PHUMEZA NHANTSI: If these were the actual quotes I would definitely have done the same or maybe if I know what I know today but at that point in time I – I felt we are not comparing apples with apples. We are comparing the actual rates with the hypothetical quotes because they even on the response from the lenders they do say without taking into account other information.

The urgency is critical Chair in – in sourcing the funds because it means the – the funders would have to go and break the investments.

- 10 **ADV KATE HOFMEYR:** Why are you – why you more comfortable with the telephonic conversation you had had with Mr Fonya?

MS PHUMEZA NHANTSI: It is because ...

ADV KATE HOFMEYR: That was not a formal quote. Was it?

MS PHUMEZA NHANTSI: Yes. It is because his – I called him one, I was – I was – because I was still a secondee at – at SAA so basically SNG was my support structure number one. Number two, I did not think at that time that I should get a formal quote especially after I - I thought I deserved to – a well done because I managed to negotiate a rate that is less than the industry norm.

- 20 **ADV KATE HOFMEYR:** Ms Nhantsi I still struggle with why even if you had all those reservations about the hypothetical quote they were coming in under half a percent. You are aware of that – the hypothetical quotes that Ms Stimpel had?

MS PHUMEZA NHANTSI: Yes. They were somewhere on 0.75 basis points yes.

ADV KATE HOFMEYR: Basis points which is a percentage of a percent as I understand the lingo.

MS PHUMEZA NHANTSI: Yes, yes.

ADV KATE HOFMEYR: She was saying to you it is considerably cheaper if we go to the banks. Do you accept that your role at SAA is to act in its financial best interests?

MS PHUMEZA NHANTSI: Yes I do and ...

ADV KATE HOFMEYR: Why would you not then try and change those hypothetical quotes into actual quotes because you have your Group
10 Treasurer saying to you I can get this for much, much less. We can save the company hundreds of millions. Why would you not then go and ask for a formal quote if necessary?

MS PHUMEZA NHANTSI: Two things Chair. One we were acting on a confinement and emergency basis. So for me to open and go to the banks and engage on hypothetical quotes it would mean I am nullifying the emergency and the confinement that was approved by the Board. That is one.

Two, as I have highlighted now that we are not comparing apples with apples. Three, the question that I had in mind is one of the
20 things if also Ms Stimpel acted in the best interest of the company as she is saying these hypothetical quotes as well she should have received it when she received the Seacrest tender and the Seacrest term sheet and if you compare this with the Seacrest tender as well the company was going to pay a much, much higher rate on Seacrest.

So I had questions. The Seacrest one was at the back of my

mind especially when every time I meet with Ms Stimpel she always talks about how the Board took a wrong decision by – by not taking Seacrest.

ADV KATE HOFMEYR: Hm.

MS PHUMEZA NHANTSI: Two, the hypothetical quotes I felt as well whilst we pushing for the company to get the funding so that we are VAT the default on the loans. Ms Stimpel is - or is still fixated on Seacrest and now she is coming on the very last hour with hypothetical quotes that are not actual quotes.

- 10 **ADV KATE HOFMEYR:** Ms Nhantsi I would like to just pick up the first of the answers that you gave there. You said you could not go the banks because you were working with the decision of the Board to award this sourcing of funds to BNP. Is that correct?

MS PHUMEZA NHANTSI: On the basis of – of emergency and confinement.

ADV KATE HOFMEYR: Indeed but you will accept that when the Board gave that instruction and decision that it took on 21 April it had no idea what the cost would be to it ...

MS PHUMEZA NHANTSI: (Intervenes).

- 20 **ADV KATE HOFMEYR:** Of sourcing these funds?

MS PHUMEZA NHANTSI: Definitely but my point Chair is we were working on the ambit of emergency and confinement and in terms of SCM we were confined to work - because of urgency we were left with two months. We were confined to work with BNP and knowing what I knew at the time I thought 1.5 anyway is – is a good rate.

The company is going to save money especially Chair that even if you look at the term sheet of BNP the rate was even now much less than the one that they gave for FDC.

CHAIRPERSON: Well did you take the view that it was unlikely that the banks would give you a lower rate than the rate that BNP was providing if – even if you approached them for an actual rate?

MS PHUMEZA NHANTSI: Comparing it to 1.5 Chair I took the view that with giving and factoring other factors it would come to 1.5 percent especially the industry norm being two to 3 percent.

10 **CHAIRPERSON:** Okay. I am not sure if that answers my question.

MS PHUMEZA NHANTSI: Huh-uh.

CHAIRPERSON: Did you think about asking for an actual rate from the banks either yourself or asking Ms Stimpel to do that for you?

MS PHUMEZA NHANTSI: At the time no – no Chair. I did not ask her because in my mind I thought the rate – after the factored the urgency on – on the hypothetical quote it will come to the 1.5 percent anyway.

CHAIRPERSON: How long would it take to get an actual rate from the banks? How long would that process take? Would it be a question of picking up a phone and/or sending an email and within the few days
20 you would get an answer?

MS PHUMEZA NHANTSI: You would send an email Chair depending if you one, you send the email to the General Liaising Banker or you are sending to the – because the communication would be you send it to the liaising person who you normally deal with at the bank and then that person needs to send it to the Corporate Financiers.

CHAIRPERSON: Different banks, *ja*.

MS PHUMEZA NHANTSI: That are dealing with these transactions which was one of the reasons Chair that I thought the people who responded they did not say the Corporate Financiers are saying this. They – they responded from their knowledge as the liaison people.

CHAIRPERSON: But how long would it take to get an answer?

MS PHUMEZA NHANTSI: A minimum of a week Chair I think would be right.

CHAIRPERSON: A minimum of a week.

10 **MS PHUMEZA NHANTSI:** Yes.

CHAIRPERSON: And at that stage was that too long, would that cause too long a delay?

MS PHUMEZA NHANTSI: Chair it was going to be too long of a delay now we're talking, we are at the dates of 24th of May and we've got loans that are maturing 30th of June yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Just to pick up one point there Ms Nhantsi I understand your evidence to be you worked out that if the banks had been given the fact of urgency which is the only fact as I compare what
20 Ms Stimpel went to the banks on the basis of and you went to Mr Fonya on the basis of, that's the only point of discrepancy, that if they had been told about urgency you surmised that their rates that were less than half a percent would then go up to 1.5%, correct?

MS PHUMEZA NHANTSI: Chair the emails, I'm sure we can go back to them, they didn't give, the other bank, because she went to two or

three, two things is the urgency and it is the fact that the money that the SAA needed should be in local denominators ...(intervention)

ADV KATE HOFMEYR: Yes but Ms Nhantsi you did not give that fact to Mr Fonya?

MS PHUMEZA NHANTSI: That is what he is saying on his affidavit Chair.

ADV KATE HOFMEYR: He does not say that you specified that it must be rand denominated.

MS PHUMEZA NHANTSI: I'm sure that I did Chair.

10 **ADV KATE HOFMEYR:** But he doesn't say that in his affidavit do you accept that?

MS PHUMEZA NHANTSI: Yes he doesn't say that I did.

ADV KATE HOFMEYR: Right. We are now Ms Nhantsi at the last point on the success fee which is that you concluded on your own estimation that the ultimate fee would get around 1.5, you didn't check that with anyone at the banks did you?

MS PHUMEZA NHANTSI: No I didn't Chair.

ADV KATE HOFMEYR: Thank you. I would then like to move to the cancellation fee which is where I thought we were previously, I do
20 apologise for that, the cancellation fee is in fact the last decision in this sequence and that you deal with at page 12 Ms Nhantsi of your statement if we can go there.

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: So there starting at paragraph 38 you're dealing with the motivation for the cancellation fee. You gave us

evidence earlier this morning that you no longer support the cancellation fee but your evidence as I have it was also that you never supported it, is that correct?

MS PHUMEZA NHANTSI: Correct Chair.

ADV KATE HOFMEYR: Can you then clarify for us why you recommended to the Board that they approve the cancellation fee?

MS PHUMEZA NHANTSI: Yes Chair the cancellation fee Chair on the 25th of May when we sent signed by Mr Lester Peters the letter of award to BnP to source the funds for the company, when they
10 acknowledged the receipt of the letter of award they then included a new clause that says should SAA cancel for whatever reason they are obliged or entitled to pay 50% of the total fees within five days or seven days if I'm not mistaken. This was the new term or the new clause altogether. When we discussed with the Board the cancellation fee was not there, so we then, I then engaged with BnP in trying to understand what is the basis of R128million because 50% of 256 inclusive of VAT is 128million.

ADV KATE HOFMEYR: Ms Nhantsi sorry to interrupt, who were you dealing with, with BnP in these conversations?

20 **MS PHUMEZA NHANTSI:** With the – the correspondence was with Mr Mahlangu and there were also I think there was a telephone call with Mr Mngadi

ADV KATE HOFMEYR: Thank you.

MS PHUMEZA NHANTSI: So both of them I engaged with them on this. I wanted to understand Chair the cancellation fee clause it's not a

new clause in the business environment, but I felt it was too high and it needs to be justified, why would one – it was never discussed with us as management it came as a shock, number one, because it was never discussed with us as management so that we can take it to the Board, it came in a letter saying should for any reason, and at that point I was not anticipating any cancellations, cancellation of the mandate, but I was aware, in the back of my mind I was aware that there was a tender that was done and which was declined. Why would a company pay to the magnitude of R128million.

10 I engaged with them, they gave me another submission, sometime in May, sometime in June I think Chair, first on the 25th if you allow me to take you through the chronology. On the 25th after we've received this as I am saying I was shocked with the cancellation fee. The acknowledgement was we had an attachment of a term sheet. I was – I then, I remember I received a call from Mr Mngadi, there was also, I've attached on my statement his Whatsapp message putting pressure on me to acknowledge the receipt of the letter and the term sheet. On the 2nd of June I then responded to say we acknowledge your – the term sheet and also acknowledging the new term of the
20 cancellation fee, please be aware that I need to take this to the Board, so I then signed – I signed the term sheet and I put a close with the advice from Legal because we discussed this with Acting CEO and also Ms Fikilepe. The advice that I got was if we just signed the term sheet it would be like we are accepting this new clause of the cancellation fee, but yet we still need to take it to the Board because this is a Board

transaction and this new term they need to be aware. I signed the term sheet and I included a handwritten note to say this is not binding until we receive board approval of the cancellation fee. This is the 2nd of June Chair, from after the pressure that I received from Mr Mngadi. The Whatsapps I have attached Chair, I am not sure if you want us to go through but between the 2nd – when I signed the non-binding term sheet up until the 8th I will come to the 8th because also Mr van der Merwe testified on the 8th, there was a lot of pressure that I was receiving, there were lots of Whatsapps from Mr Mngadi, there were

10 lots of calls from the Chairperson of the Board and the words that she used to use is I am behaving as if it is business as usual, and it is not business as usual, the company is going down if we don't get the funding.

I resisted, I wrote the acknowledgement and I said I am going to take it to the Board. On the 8th – before the 8th there was a board meeting, there was a meeting that we had at National Treasury on the 3rd of June. I woke up with a Whatsapp from Mr Mngadi saying if it looks like one, it's saying they appointed me to lead them, therefore I must lead them, I should not say I am waiting for Legal on certain

20 things and if I don't want to cooperate or before I go to the meeting of the 3rd I should sign that term sheet and take out the Landbank deal or I should tell him because he needs to engage and inform the stakeholders.

CHAIRPERSON: Who was saying that, I missed that?

MS PHUMEZA NHANTSI: Mr Mngadi, on the Whatsapp.

CHAIRPERSON: And he was saying they appointed you?

MS PHUMEZA NHANTSI: He said we have appointed you to lead us, so lead us.

CHAIRPERSON: But he was not part of SAA?

MS PHUMEZA NHANTSI: He was not part of SAA hence Chair ... (intervention)

CHAIRPERSON: So how could he have been part of appointing you, do you know?

MS PHUMEZA NHANTSI: Chair after the – after he read the
10 Whatsapp from Mr Mngadi I called Ms Yaki Kunana to say this is not what I signed up for, it looks like now I'm tapping into damaging the integrity and my name, if I am asked to sign things that are beyond my mandate that are the Board's mandate, this is not what I signed up for and then ... (intervention)

CHAIRPERSON: Just to go back, I want to make sure I understood you correctly.

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: He sent you a Whatsapp message or was it a telephone conversation?

20 **MS PHUMEZA NHANTSI:** It was a Whatsapp Chair.

CHAIRPERSON: Oh, saying we ... (intervention)

MS PHUMEZA NHANTSI: We appointed you to lead us.

CHAIRPERSON: ... lead us, we appointed you to lead us.

MS PHUMEZA NHANTSI: That's what it's saying the Whatsapp Chair.

CHAIRPERSON: Okay, yes, okay continue.

MS PHUMEZA NHANTSI: I then called with frustration Ms Yaki Kunana as I have related earlier Chair that I worked with her at Denel to say this is tantamount to tarnishing my reputation because if now I am asked to do – to sign things that are beyond my mandate that are the Board I will not be able to do that. Her response was if you feel that your integrity is going to be tarnished and your name don't – her words where "don't even walk away run away" so I even responded on that Whatsapp, normally I don't respond on some Whatsapp, I respond on some, I responded to Mr Mngadi on that day to say this is the Board
 10 mandate, if I am expected to take decisions this is beyond my mandate and unfortunately when I joined SAA I was told that Legal needs to be involved, now basically his Whatsapp wanted me not to involve Legal, but I never questioned the part of we appointed you to lead us, so lead us.

CHAIRPERSON: Yes, I just want to go to that Whatsapp message.

ADV KATE HOFMEYR: Indeed, let's go there Chair, if I may suggest can we do them in chronological order, the Whatsapps?

CHAIRPERSON: That's fine, that's fine.

ADV KATE HOFMEYR: So we will start at –of Ms Nhantsi's bundle
 20 page 84.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Sorry I just suggested to you to see the progression in time, because Ms Nhantsi's evidence is that there was increasing pressure placed on her and if you read these Whatsapps in chronology you see that pressure mounting. If we begin at 84 it's a

Whatsapp I have at 31 May so that's six days after they had been awarded the sourcing of funds, six days after the first letter saying we want a cancellation fee of 50% of our total fees. It talks about on page 84 as they have it a whole lot of reasons why they should be getting this cancellation fee, it's about costs that they have been incurring etcetera, but what I think is useful is if we go over to 85, you will ...(intervention)

CHAIRPERSON: And maybe just for the sake of completeness I didn't see this, maybe to the extent that some of them have got some
10 sentences in isiXhosa or isiZulu, if arrangements can be made for a translation and – of those parts which are not in English.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Ja, I will understand it but somebody else might not understand.

ADV KATE HOFMEYR: Yes, I have previously been assisted with a translation by one of our investigators but we will do that formally Chair.

CHAIRPERSON: Yes, no that's fine.

ADV KATE HOFMEYR: Thank you. We will do that and we will just
20 supplement the bundle with those translations.

CHAIRPERSON: Yes, that's fine ja.

ADV KATE HOFMEYR: But if we go to page 85 I would like to pick it up in the middle of the page, Ms Nhantsi what you see there is just a little bit above the middle, this is the sort of conclusion of the justification:

“When SAA’s customers cancel or change tickets SAA charges cancellation fee. We wanted 75% cancellation fees but in dealing in good faith with SAA so we negotiate we end at 50%.

We ask for BnP’s actual cancellation costs are.”

Ms Nhantsi you will have heard the evidence of Mr van der Merwe did you not?

MS PHUMEZA NHANTSI: Yes I did.

ADV KATE HOFMEYR: You are aware that he denies any of those costs had been incurred.

10 **MS PHUMEZA NHANTSI:** Yes Chair.

ADV KATE HOFMEYR: You didn’t know that at the time though did you?

MS PHUMEZA NHANTSI: I didn’t know Chair.

ADV KATE HOFMEYR: If we go to point 2 it says:

“Ray your statement that you take instructions from Yaki, unless Yaki and the Chair comes up with a unanimous position with respect”

You will have to assist me there.

MS PHUMEZA NHANTSI: I don’t know.

20 **ADV KATE HOFMEYR:** You don’t know? Well we ...(intervention)

MS PHUMEZA NHANTSI: That’s what he’s saying, (indistinct) means I don’t know.

ADV KATE HOFMEYR: Oh I see, I don’t know.

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: Ja, it’s either I don’t understand ...(intervention)

MS PHUMEZA NHANTSI: Either I don't understand or I don't know what's happening.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: Ja.

ADV KATE HOFMEYR: And then if you read on there, he goes on to say?

MS PHUMEZA NHANTSI: "Your allergens I thought you were a part of our collective team."

ADV KATE HOFMEYR: Could you just stop there, what did you
10 understand that to be, what team were you a member of with Mr Mngadi?

MS PHUMEZA NHANTSI: I didn't understand Chair, this is one of the things that I didn't understand on his pressure, hence I ended up calling Yaki to say maybe I got the wrong memo when I signed up with SAA, this is not what I signed up for.

ADV KATE HOFMEYR: Ms Nhantsi in these Whatsapps that you've provided to us we often see what Mngadi said but not what you've said either prior or after these conversations, can I take it you don't have a difficulty providing those to the Commission?

20 **MS PHUMEZA NHANTSI:** Some of them I never responded, the ones that I have I will give it to you Commission.

ADV KATE HOFMEYR: Thank you. I'm just interested
...(intervention)

CHAIRPERSON: I'm sorry, I think she must just complete that message.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Please complete this message because you understand the isiXhosa or isiZulu there, you provide what your understanding was.

MS PHUMEZA NHANTSI: Ja, (indistinct) means my apologies if I misunderstood, have a good day.

CHAIRPERSON: Yes. Thank you.

ADV KATE HOFMEYR: Then if we go over to 87 ...(intervention)

CHAIRPERSON: So ...(intervention)

10 **ADV KATE HOFMEYR:** Apologies Chair.

CHAIRPERSON: ...here this last sentences or two of that Whatsapp message he conveys to you that his understanding was that you were part of what he calls our collective team?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: And you say you didn't understand what he was talking about.

20 **MS PHUMEZA NHANTSI:** Yes, I didn't understand Chair but on the 31st of May because it was the first Whatsapp that talks about the team I didn't do anything about it, I will check if I responded, but now as the pressure mounted where now he was telling me to do things, if I don't do I must inform him because he needs to inform the stakeholders which I didn't know who the stakeholders were, that's when I decided to call Ms Kunana, to say I am not sure if this is what I signed up for, because it looks like now we are tapping into my integrity and in how I do things, because I would never sign up for anything, the transactions

that belongs to the Board I respected and throughout my evidence I have been respecting the fact that they are the board's transaction. So now he wanted me to just sign the term sheet and take out non-binding without addressing the cancellation fee, yet on BnP's acknowledgment of the sourcing of funds they included this cancellation fee.

So that is why on the first part of the Whatsapp he says why am I combining two issues, why am I combining the term sheet and the cancellation fee.

CHAIRPERSON: By the time you got this message you – were you still
10 feeling comfortable about Mr Mngadi's role in these SAA matters?

MS PHUMEZA NHANTSI: Chair I was not comfortable at all, in fact the pressure Chair I was not only getting it from Mr Mngadi, I was also getting calls from the Chair of the Board, maybe I missed this at the beginning to say when I first joined SAA I would say we were still on good terms with (indistinct), she once told me that the reason why nobody can find anything on her is because she does not write anything down, so she would hardly send these Whatsapps but she would give me a call to say you and Mossa think this is business as usual, it is not business as usual, you need to sign these things urgently, the funders
20 are in Paris and somewhere and waiting for the term sheet and yet I am playing around.

CHAIRPERSON: So how soon after you had commenced your work at SAA did she make this statement to you that the reason why nothing could be found on her is that she did not sign anything?

MS PHUMEZA NHANTSI: I'm sure it was a week or two Chair, we were

just chatting outside the board meeting

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: And then it started, she asked me if I know any – she said she is popular in the media and have I read anything. I said I've read about SAA and in the accounting space we are normally very busy but I have heard about her name and then she said, she laughed and then she said the reason why nobody can find anything pointing to her is because she does not write anything down. I used it to my advantage later on Chair what she told me because I just laughed
10 and then I said serious (indistinct) serious Chair and then she said yes, but I used it to my advantage as the time goes on.

CHAIRPERSON: Yes okay thank you.

ADV KATE HOFMEYR: If we could then turn over to 87 Ms Nhantsi because this is a Whatsapp, it's not obvious from the page what date it was on but I take it to be the 2nd of June because it's referring to that letter that you'd sent on the 2nd of June which didn't include the binding, it had that caveat about being non-binding, correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: I really would like us to unpack those first few
20 sentences on the page, let's start with the first Sis Wam.

MS PHUMEZA NHANTSI: My sister.

ADV KATE HOFMEYR: My sister. This letter you have sent with respect means nothing, and I'm really interested in the second sentence and your help with that. It reads:

“It is of no use to the funders, to me, to everyone.”

Who is the everyone that is going to benefit from a conclusion of the funding arrangement and agreement on the cancellation fee?

MS PHUMEZA NHANTSI: My – the only person at this point Chair that I knew now especially getting uncomfortable at this point I would say is the Chair of the Board.

ADV KATE HOFMEYR: It then goes on to say:

“We might as well have waited for you to get Board approval for the cancellation fee clause.”

What did you understand that to mean?

10 **MS PHUMEZA NHANTSI:** Basically he expected me Chair to sign the term sheet and not include the non-binding, I was trying to read the entire, because there's somewhere he says why am I mixing the two, the term sheet and the cancellation fee because he said he was under pressure from the funders and the funders are now their view is they are not taking, they think SAA is not serious in getting the funds.

ADV KATE HOFMEYR: Hmm.

CHAIRPERSON: Who was saying he was under pressure, Mr Mngadi.

MS PHUMEZA NHANTSI: Mr Mngadi.

CHAIRPERSON: But why would he be, have any contact with the
20 funders of SAA since he was outside of SAA?

MS PHUMEZA NHANTSI: He was working with BnP. He was working with BnP Chair.

CHAIRPERSON: Oh from that capacity?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: So Mr Mngadi Chair at this point as I understand the chronology is seeking to motivate for the cancellation fee because if its paid to BnP it he is sitting associated with BnP at that point. If we can then go on ...(intervention)

CHAIRPERSON: So – I'm sorry again.

ADV KATE HOFMEYR: Apologies Chair.

CHAIRPERSON: So we – the picture we have is of Mr Mngadi who at the time you arrived at SAA you were told was the Chairperson's person?

10 **MS PHUMEZA NHANTSI:** Yes Chair.

CHAIRPERSON: And you established that he was not being paid for his services by SAA?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Who nevertheless was very involved in SAA matters?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: And then at the same stage you established that he was part of Nedbank?

MS PHUMEZA NHANTSI: Yes Chair.

20 **CHAIRPERSON:** And then later on you found that he was involved with BnP?

MS PHUMEZA NHANTSI: Yes because he started giving me pressure Chair.

CHAIRPERSON: Yes, but throughout or as at the time of this Whatsapp message as far as you knew he was still involved with all of these people, he was still involved with Nedbank and still involved with BnP

and was still as you were told the Chairperson's person?

MS PHUMEZA NHANTSI: I assumed Chair that he was ...(intervention)

CHAIRPERSON: That was your understanding?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Ms Nhantsi were you aware of any personal relationship between Mr Mngadi and anyone in Ms Nene's family?

MS PHUMEZA NHANTSI: Family?

ADV KATE HOFMEYR: Yes.

10 **MS PHUMEZA NHANTSI:** No Chair I was not until I read one of the affidavits that I got from the Commission that – and also the transcript that Ms Kunana had with OUTA that he is friends with – I just forgot his name, but it's Ms Chair's son.

ADV KATE HOFMEYR: Mr Talente Majeni?

MS PHUMEZA NHANTSI: Yes, yes Mr Talente Majeni, so I knew it, last week I think on Friday when I got ...(intervention)

ADV KATE HOFMEYR: You didn't know that prior?

MS PHUMEZA NHANTSI: No.

ADV KATE HOFMEYR: And did you ever see him arrive at SAA with Mr
20 Majene?

MS PHUMEZA NHANTSI: No I never saw him.

ADV KATE HOFMEYR: Thank you. Chair we will return to that in the course of Mr Mhlangu's evidence, but in relation to what carries on, on page 87 I would just like to pick up a point midway down where Mr Mngadi says:

“I thought the Board Resolution was circulated yesterday to be dealt with today.”

Were you telling him when board resolutions were being circulated within SAA?

MS PHUMEZA NHANTSI: No certain information Mr Mngadi would know and then I assumed that he was getting that information from Chair.

ADV KATE HOFMEYR: Yes certainly that seems to be apparent from the Whatsapp messages. The other one I can think of is the one that
10 he sends you on the 23rd of May. Remember the 23rd of May is before the board has approved the appointment of BnP to source the funds, well the second time let me be clear that they approve it.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: And the Whatsapp communication with Mr Mngadi has him saying to you:

“I know the Chair has approved but what has happened to the other two.”

Do you recall that Whatsapp?

MS PHUMEZA NHANTSI: Yes I do.

20 **ADV KATE HOFMEYR:** So I would suggest to you that’s a further indication that he was receiving information about what was happening within the decision making of SAA.

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: And not from you?

MS PHUMEZA NHANTSI: Not from me Chair.

ADV KATE HOFMEYR: Thank you. If we then go over to page 89, this is a Whatsapp where as I read it there was a reference directly to the Chair, this is going on Ms Nhantsi about why you have to sign this term sheet and why this is needed for SAA, and then it goes, this is the one, sorry you were looking for it – why link these issues with the term sheet.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: That's at the bottom.

MS PHUMEZA NHANTSI: Okay.

- 10 **ADV KATE HOFMEYR:** But the one I'm interested in is can you just read for us the last sentence and translate it there?

MS PHUMEZA NHANTSI: It is saying please talk to the Chair
...(intervention)

CHAIRPERSON: I'm sorry, are you at 89?

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: Page 89? Is it page 89 that you asked us to be?

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: I'm trying to – I didn't see what she has just read.

ADV KATE HOFMEYR: Apologies.

- 20 **CHAIRPERSON:** Is it on page 89?

MS PHUMEZA NHANTSI: Yes the ...(intervention)

ADV KATE HOFMEYR: It's the last two sentences.

MS PHUMEZA NHANTSI: The last two sentences.

ADV KATE HOFMEYR: The last two lines.

CHAIRPERSON: Oh, okay, I'm looking at the top, okay, yes.

MS PHUMEZA NHANTSI: It is saying please (African language) meaning please can you talk to the Chairperson she is expecting your call.

ADV KATE HOFMEYR: What did you take that to mean?

MS PHUMEZA NHANTSI: As a – I think now I take this as more he's given up now, he's giving me – handing me back to the Chair to talk to the Chair of the Board. I will check the dates Chair, I think this is the 8th of June. So I am with all this backwards and forwards waiting for the Board now she is handing me, this is the – this is the this is also
10 linked to the email that I got from him on the 8th of June. It was for the email from Mr Mogadi to me and Moosa and the only board member that was copied was the Chair, Ms Myeni(?).

ADV KATE HOFMEYR: You've included that email?

MS PHUMEZA NHANTSI: Yes, I did.

ADV KATE HOFMEYR: Yes, we can go to that in a moment.

CHAIRPERSON: At this stage, I'm sorry. At this stage, how many Board members did the Board have?

MS PHUMEZA NHANTSI: Three Chair.

CHAIRPERSON: Still three?

20 **MS PHUMEZA NHANTSI:** Still three.

CHAIRPERSON: Including the Chairperson?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: We can then go to but to 91. Chair this is the WhatsApp you were particularly keen to take a look at.

CHAIRPERSON: Yes, thank you.

ADV KATE HOFMEYR: This is the one Ms Nhantsi, as I have your evidence you got early on that morning that you were scheduled to meet at National Treasury, correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: And there you have the reference after him indicating he hoped you had a restful evening, where he says you have been chosen to lead SAA to lead us. I have faith in you to please demonstrate your leadership qualities, you take decisions not legal. Do
10 you see that?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: And then he goes on to explain again why he needs a signed off term sheet without conditions.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: And he ends off saying that he wants to inform all the stakeholders. Who are all these stakeholders he wants to inform about the successful conclusion of the term sheet, do you think?

MS PHUMEZA NHANTSI: I assumed it would be the Chair and also the Grissag Funders because on all the communications he's been
20 consistent in saying the Funders is out in Canada, in Paris and everywhere awaiting for the term sheets that does not have the none binding because he even on the other SMS on the other WhatsApp said they're expectation- allow me to just on page 89. He said the impression created is that SAA does not want this funding, the funding term sheet you say is not binding is subject to issues that have nothing

to do with a term sheet. I don't know what to say to the Funders (African Language) means I don't know what to say to the Funders now. Please let us withdraw the letter. So this is the WhatsApp where he is instructing me even towards the end of that WhatsApp he says if we don't lead this airline, someone else will lead it for us. Believe me when I say we don't have time. If you can't execute my request by latest 9 o'clock this morning, please let me know in the morning so that I can inform all the stakeholders accordingly.

ADV KATE HOFMEYR: Ms Nhantsi, at the time that you were receiving
10 these WhatsApps were you concerned about the closeness of his relationship with Ms Myeni?

MS PHUMEZA NHANTSI: Yes, I was and I was always in discussion with all what is happening with Mr Zwane. I used to even ask is this how the Corporate world works?

ADV KATE HOFMEYR: And we've had some references to teams and the collective in these WhatsApps. Was your understanding that the persons who stood to benefit from the conclusion of the cancellation fee included Ms Myeni?

MS PHUMEZA NHANTSI: Yes, I did because on the basis that the Mr
20 Mogadi would know what we discuss in the Board meeting and without me informing him. So I then understood that he is working with Ms Myeni.

ADV KATE HOFMEYR: Ms Nhantsi, why didn't you sound the alarm then?

MS PHUMEZA NHANTSI: Chair, I was going to- we discussed this with

Mr Zwane to say this is starting to suggest something else. And I even asked Mr Zwane what is the process of the whistleblower and all that. He then said, no let's see how this goes because the Board is not going to approve the cancellation fee. Even Chair allow me to say, eventually after I signed the term sheet and took out, it was on the day when Ms Myeni called me. I told her that I will only take it out if she agrees with me that I will still- I'm still going to deal with the cancellation fee. I can take out the non binding so that the Funders can go and give money but the cancellation fee I'm still going to take it to the Board. I

10 recall that from our conversation, Mr Zwane got a call from the Chair to ask how much is his DOA, how much can he sign up to. Mr Zwane said up to 50 million. And two days later we received a revised cancellation letter from BNP Capital saying they're trying to put us at ease because we've been saying the cancellation fee is high. Now they've reduced it to 49.9 million.

CHAIRPERSON: This was after you had insisted to the Chairperson that you wanted the opportunity to raise the issue of the cancellation fee with the Board even if you took out or cancelled the non binding statement.

20 **MS PHUMEZA NHANTSI:** Yes Chair.

CHAIRPERSON: So after that the amount was reduced.

MS PHUMEZA NHANTSI: To 49.9 Chair.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: So which was suspicious Chair one BNP failed to demonstrate the make-up of 128 million.

CHAIRPERSON: Yes.

MS PHUMEZA NHANTSI: If I recall on their letter there's somewhere where, I think the second letter of justifying the cancellation fee. They said, Grissag is going to charge them 5 million US dollars if this transaction is cancelled. So this is just a direct filter as they get the penalty from Grissag, they then sending it to SAA. From there Chair it's then reduced to miraculous amount of 49.9 million which I knew at the time and also the acting Chair knew that Ms Myeni is behind it. Because he called him, I think the reason why he called him was he

10 wanted to make sure that this transaction does not go to the Board. Because it was after I said to her, I'm going to take the cancelation fee to the Board still even if I take out the non binding. So I then did a submission for round-robin because Chair again this was in the purview of the Board and in terms of the SCM policy term, now this was an addition amount to the 256 million inclusive of vat. So what she was not aware of none the less I'm going to take it to, we're going to take it to the Board. So I did the submission Chair to the Board and then I called Dr Thambi and I also called Ms Myeni to say there's a round-robin that routes the company secretary is going to send, I'm not

20 comfortable with the amount but Chair is pushing it. I remember I even said to Ms Kwinana that I'm scared now of even pushing this further. Can they take a decision because I've been- Chair has been calling me day and night about this, can the Board take a decision, I am scared. I abstained I think Chair the intention was not to abstain but I was very busy but I knew that I'm not going to approve it, I was going to reject

but I abstained. And Dr Thambi abstained after my call, Yakhe abstained, Mr Zwane rejected and Ms Myeni approved it. I think before she approved it she gave me a call to ask why am I taking things that are not concerning the Board to the Board. I told her that it is part of the it's an addition and especially it's a new term that I needed to give to the Board and the Board must deliberate on it because this is the Board transaction so she said okay and then she responded. Then as Ms Hofmeyr asked Ms Thembile to read it.

CHAIRPERSON: Okay, thank you.

- 10 **ADV KATE HOFMEYR:** Chair, I see we're at 17h30. There are a few follow up questions but I'm happy to raise them tomorrow. There's not much more of Ms Nhantsi's testimony. There's this aspect on the cancellation fee which we'll conclude shortly and then one or two other aspect of her evidence to traverse.

CHAIRPERSON: If it's going to finish within the next 10 15 minutes or even up to six if you are still strong enough and if Ms Nhantsi is still available to continue, I am prepared to continue until at least 6 o'clock if that will help us to make sure she is done. Would that be enough or would that not be enough?

- 20 **ADV KATE HOFMEYR:** Chair, my fear is that it will be a bit more than half an hour but that's not a reason not to use it now. And then if we have to pick it up briefly tomorrow morning to do so.

CHAIRPERSON: Yes, but you still fell strong?

ADV KATE HOFMEYR: I'm strong enough Chair.

CHAIRPERSON: Ms Nhantsi, are you able to continue to try and see if

we can finish?

MS PHUMEZA NHANTSI: Yes Chair, I am strong.

CHAIRPERSON: You are?

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: Okay alright, let's go at least up to six and let's look at the situation at that time.

ADV KATE HOFMEYR: Thank you, Chair. Ms Nhantsi, what I'd like to pick up on in relation to your last answer is we were at about the 8th of June when you told us you had that conversation with the Chair, you
10 said okay I'll sign ... (intervenes)

CHAIRPERSON: I'm sorry, I'm just wondering whether seeing that we won't get to Mr Mahlangu whether you want to make any arrangements for about him. I'm assuming he's here because he was meant to continue?

ADV KATE HOFMEYR: He is indeed.

CHAIRPERSON: Yeah, in terms of continuing I'm just thinking people might have had other plans. They didn't know we would get, oh he's cancelling the case then there's no problem. Okay, no that's alright.

ADV KATE HOFMEYR: Thank you, Chair.

20 **CHAIRPERSON:** Okay, let's continue then.

ADV KATE HOFMEYR: So on the 8th of June you signed a binding version of the term sheet, correct?

MS PHUMEZA NHANTSI: Correct Chair.

ADV KATE HOFMEYR: But I understand your evidence to be you did so after a conversation with the Chair, correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: In which you said that you were still going to take the issue of the cancellation fee to the Board, correct?

MS PHUMEZA NHANTSI: Yes, correct.

ADV KATE HOFMEYR: And by this state you've had all of this pressure in the correspondence with Mr Mogadi. Now as I understand your evidence, you are concerned that the Chair is unduly involved in this, correct?

MS PHUMEZA NHANTSI: Correct Chair.

10 **ADV KATE HOFMEYR:** And stands to benefit from it in some measure, correct?

MS PHUMEZA NHANTSI: Correct Chair.

ADV KATE HOFMEYR: Why don't you blow the whistle then? We still in June, you only get to your submission to the Board to recommend this approval on the 4th of July. Why not blow the whistle in those three weeks?

MS PHUMEZA NHANTSI: Chair, blowing the whistle I wanted to but I must also admit that I was not familiar. This was the first time that I left the accounting practice and I'm in there in the Corporate space.

20 So blowing the whistle will not be the first thing that come to my mind.

ADV KATE HOFMEYR: You had had a conversation with Mr Zwane about that, haven't you though?

MS PHUMEZA NHANTSI: I had and I asked in terms of reporting things like this what then happens. And he told me that there's a policy the custodian is the Chief internal auditor that we can report this to. But I

think at that point we said let's- he used to say is it kit for kat, he said let's take it one day at a time and see what happens.

ADV KATE HOFMEYR: And taking it one day at a time as I have it then culminates on the 4th of July where you send a recommendation to the Board that they approve the cancellation fee, correct?

MS PHUMEZA NHANTSI: Yes, this was also after lots of pressure. Now the pressure was also coming from BNP if I'm not mistaken. They wrote a letter as well to me about the cancellation fee.

ADV KATE HOFMEYR: But Ms Nhantsi, you owe BNP nothing don't
10 you?

MS PHUMEZA NHANTSI: Yes, I definitely owe BNP nothing but I feel that the decision needs to be taken by the Board.

ADV KATE HOFMEYR: But why recommend it? If you recommend it you are saying to the Board, I stand behind this. If we go to it, let's just look at it.

MS PHUMEZA NHANTSI: Yeah sure.

ADV KATE HOFMEYR: We go to, its Stimple's bundle that's exhibit DD1B.

MS PHUMEZA NHANTSI: Yes.

20 **ADV KATE HOFMEYR:** It's at 555.

MS PHUMEZA NHANTSI: Yes, I'm there Chair. Chair, this is I guess I'm answering why I'm recommending to the Board.

ADV KATE HOFMEYR: Yes, because can we just look at the document before you give us the answer because it's a motivation for this cancelation fee to be approved. And it is your motivation, correct?

MS PHUMEZA NHANTSI: Yes. Correct Chair.

ADV KATE HOFMEYR: Why do you motivate for a cancelation fee that you are highly suspicious of at this stage?

MS PHUMEZA NHANTSI: Chair, first this is the template that SAA use to communicate to the Board and if you ask me today whoever company I'll be working for, what would I change, is the last page where it's saying recommendation or not recommend or not recommend. This is how the template is basically I'm not saying I'm recommending to the Board. I'm saying this is the Board for their consideration hence after I
10 even wrote it I called Dr Thambi and Ms Kwinana to say one I'm scared, two I'm- the pressure is mounting. I can't even, I don't know what to do. Can they now as the board deal with the cancelation fee and take responsibility of it. So this is all the memos Chair that we've dealt with today. Today this is the template this is the format that is used by SAA. There are certain memos that we also took to the Board that are saying recommend to approve but the Board had declined. So this is the template for the Board for their consideration.

ADV KATE HOFMEYR: Ms Nhantsi, with respect I don't think the fact that it is a template is an answer to my question. You took a decision
20 to recommend to the Board on the 4th of July motivated in the terms recorded here for a cancelation fee to be paid, correct?

MS PHUMEZA NHANTSI: I took a decision to do a memo to the Board for their consideration.

ADV KATE HOFMEYR: That contained ... (intervenes)

CHAIRPERSON: I'm sorry, maybe let me help. In that memo, did you

recommend that the Board approve the cancelation fee?

MS PHUMEZA NHANTSI: Yes Chair and the reason for that ...

(intervenes)

CHAIRPERSON: No, is it yes?

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: Yes, you did approve. You did recommend.

MS PHUMEZA NHANTSI: I did recommend but in contrary ...

(intervenes)

CHAIRPERSON: Ms Hofmeyr is then asking the question, why did you
10 recommend that the Board approve the cancellation fee because you
were suspicious of this whole thing.

MS PHUMEZA NHANTSI: Yes Chair, it was because of the one of us
have agreed that I've done the submission recommending to the Board.
Chair it was the pressure that I was getting from Mr Mogadi, it was the
pressure that I was getting from the Chair of the Board Ms Myeni to the
extent I remember this is one of the things that I discuss with my
husband to say, I'm not sure if the decision to join SAA was a good
one. Because I'm very scared now with the decisions that needs to be
taken but I even said I will follow my guts and call the other Board
20 members and alert them that I'm concerned. But I was scared Chair as
well to put it on writing here to say, hey I'm scared and I'm not in
agreement with this 49.9 million. But I was hoping and I knew that Mr
Zwane is not going to approve it because we've been discussing.

CHAIRPERSON: Okay, one you agree that the memo that you sent to
the Board recommended that they should approve the cancelation fee.

We've agreed on that?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Yes. But is the position that you are saying in sending in making that recommendation, you were uneasy about making that recommendation. But you made it because you were under pressure, is that part of what you are saying?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: And you talk about you having called members of the Board or having planned to call the members of the Board or some
10 members of the Board, is that right?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Is that a decision you made before you made the recommendation or before you sent it that you were going to call members of the Board?

MS PHUMEZA NHANTSI: I planned to call members of the Board as I was doing the submission. I then took the submission after both myself and acting CE signed, we followed the process of round-robin and sent it to company secretary. Once it was still with company secretary, I then called two other members of the Board to say ... (intervenes)

20 **CHAIRPERSON:** Two out of the three members of the Board.

MS PHUMEZA NHANTSI: Two out of the three because the first one is Ms Myeni, it's the one who's giving me pressure. So there's the other two members, I then said to them there's a round-robin coming. By then company secretary has not sent it. There's a round-robin coming, I'm concerned. I even said I'm scared at because of the pressure that

I'm getting from the Chair. I'm concerned, the amount is high but can the Board take the responsibility and the accountability.

CHAIRPERSON: Did you say to them when they see- did you say to them they will receive from the company secretary a memo from you?

MS PHUMEZA NHANTSI: From the company secretary.

CHAIRPERSON: From the company secretary but the memo would be written by you?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: And did you say to them in that memo you will read
10 that I'm recommending that you approve the cancelation fee?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Did you then say to them that's not my true view. I've written it like that because I'm under pressure. I'm actually not in support of the cancelation fee.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Did you say that?

MS PHUMEZA NHANTSI: I said that, Chair.

CHAIRPERSON: To both of them?

MS PHUMEZA NHANTSI: To both of them Chair.

20 **CHAIRPERSON:** And what did they say?

MS PHUMEZA NHANTSI: Ms Kwinana said okay, she hears me. She will wait for the memo to come through. Dr Thambi said the memo is not yet with him, he will check his inbox. So I didn't then make a follow up but they abstained from voting for this decision. So Chair, I also abstained, Mr Zwane rejected and Chair was the only person who

approved the cancelation fee.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Ms Nhantsi, I'd like to just clarify some aspects of those conversations you had with Dr Thambi and Ms Kwinana.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Did they give you an undertaking on that call that they would vote against it?

MS PHUMEZA NHANTSI: No, they did not. They did not tell me how they will vote on it. I raised all my concerns, I raised everything, they
10 said they hear me. Ms Kwinana said she will apply her mind when she gets it. Dr Thambi as well listened to me and then said he will check, he will be on the outlook to check that submission that I'm talking about.

ADV KATE HOFMEYR: So they gave you no guarantee as to the way they would vote?

MS PHUMEZA NHANTSI: Dr Thambi gave me no guarantee but I could sense from the discussion that Yakhe would not vote for it.

ADV KATE HOFMEYR: But it was foreseeable ... (intervenes)

CHAIRPERSON: I'm sorry, you stop to speak of Dr Thambi and Yakhe.

20 **MS PHUMEZA NHANTSI:** Sorry, Ms Kwinana. Sorry.

CHAIRPERSON: Okay, just repeat what who in respect of whom did you get the sense that he or she was not going to vote in favour?

MS PHUMEZA NHANTSI: Chair, I got the sense from Ms Kwinana after I raised all my concerns that she will not support it.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: But it was a sense, it wasn't an undertaking correct?

MS PHUMEZA NHANTSI: It was not an undertaking at the time.

ADV KATE HOFMEYR: So it was a foreseeable possibility that she may consider and vote in favour of it? Yes?

MS PHUMEZA NHANTSI: No, it was probably it was more probable than not that she will not vote for it.

ADV KATE HOFMEYR: And was it reasonable foreseeable that Dr Thambi could vote either way?

10 **MS PHUMEZA NHANTSI:** He did not, I couldn't sense anything. He said he was going to wait for the email.

ADV KATE HOFMEYR: So he could have voted for, he could have voted against correct?

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: Are you aware of the manner in which board resolutions are passed by majority vote of the votes cast. Are you aware of that provision of the memorandum of incorporation of SAA?

MS PHUMEZA NHANTSI: Yes, I am.

20 **ADV KATE HOFMEYR:** So it's not the majority of the votes available, it's the majority of the votes cast which means that if Board directors abstain, they don't count for the total number that you have to get a majority vote on. Do you understand that?

MS PHUMEZA NHANTSI: No, come again.

ADV KATE HOFMEYR: Okay, let's just go to the memorandum of incorporation. It's in your bundle at page 152.

MS PHUMEZA NHANTSI: 152, sorry. Yes.

ADV KATE HOFMEYR: You'll see ... (intervenes)

CHAIRPERSON: While Ms Hofmeyr you are looking at that, can I just ask this. At some stage when you were talking about the memo to the Board that we are talking about from you that was going to go via the company secretary to Board members. You said the only thing you'd change in it is the recommendation part where it says recommended or something like that. Is that correct?

MS PHUMEZA NHANTSI: Chair, I was more saying the templates going
10 forward knowing what I know today, I would give myself a space where I state my view as the author of the document where I say am I recommending it or as the author what is my view. Because if that's the case on this one but not having all the pressures that I was under at this current transaction, I would say the amount is too high. I am not comfortable with it.

CHAIRPERSON: Well, I'm not sure that I understand that. That suggest to me that you are saying that this template did not give you room to say you are not recommending if in fact you are not recommending.

20 **MS PHUMEZA NHANTSI:** Yes Chair, it was not giving room and company secretary insisted that we don't change the templates. There were two templates of SAA this one and the other one. So you were not supposed to temper with the template.

CHAIRPERSON: Yes, but there under three where it says recommendation, obviously you must have understood that there you

write what you support should be done by the Board. If you say you recommend that they approve, you write that. But equally it must be that if you don't approve, if you don't recommend that they approve that's where you write that as well. Was your understanding different?

MS PHUMEZA NHANTSI: Chair, because I was part of the Board members because I have to take it to the Board at the submission.

CHAIRPERSON: Yes, I understand that.

MS PHUMEZA NHANTSI: But now if I'm saying that I'm recommending that the Board should not approve it, my understanding is why am I
10 taking it there?

CHAIRPERSON: Yes, but if you are not the one who's supposed to decide aren't you putting everything before them? And then you expressing your view but your view is not binding on them?

MS PHUMEZA NHANTSI: No, I agree Chair, hence I am saying differently if it was not this kind of transaction where I was under pressure, I was scared. I couldn't put it Chair even though I knew at the time that I was writing this that I'm not in support and I'm not going to support it. But I had to write the submission.

CHAIRPERSON: Yes, but what I would- I thought your evidence was it
20 you accept that in this memo you recommended that the Board approves the cancellation fee.

MS PHUMEZA NHANTSI: That's what I said Chair.

CHAIRPERSON: You agree with that?

MS PHUMEZA NHANTSI: Yes.

CHAIRPERSON: Yes, I thought you agreed with that. And then I

thought what you meant was you did intend to recommend that they approve but your intention to recommend that they approve but that they approve but your intention to recommend that they approve was based on pressure.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: That you were getting.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Not because had you'd been given another space to say recommend or not recommend you would have said not recommend
10 which is what I understand you now to be saying.

MS PHUMEZA NHANTSI: Oh no Chair, this it was just an example for other things to say the lesson that I've learned here on the template. But you are right I was under pressure to recommend.

CHAIRPERSON: And when you recommended you knew that you were recommending. You knew that if you didn't want to recommend it, you would say, I do not recommend it. (Audio Microphone is off)

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: But because of the (inaudible) you recommended.
(Microphone is off)

20 **MS PHUMEZA NHANTSI:** Yes Chair.

ADV KATE HOFMEYR: Chair, sorry to interrupt. Just your microphone has gone off, thank you.

CHAIRPERSON: Okay, let's just do that again so that it's captured on the trans- on the recording. So when you signed the memo you knew you knew that you were recommending that the Board should approve

the cancelation fee?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: And that's what you intended them to know?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: But you did so because of pressure.

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: If there wasn't pressure, what would you have written here?

MS PHUMEZA NHANTSI: I would have written Chair to say for the
10 Board to consider and for the Board to note that I am not comfortable,
the amount is too high therefore I'm not recommending the Board to
approve it.

CHAIRPERSON: You would have said you are not recommending the
approval?

MS PHUMEZA NHANTSI: Yes Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Who had applied the pressure in the led up to
the 4th of July?

MS PHUMEZA NHANTSI: The Chair- I'm sorry. Ms Myeni the
20 Chairperson of the Board and Mr Mogadi.

ADV KATE HOFMEYR: And in what form did the pressure come from
Ms Myeni?

MS PHUMEZA NHANTSI: Via phone calls, I would get more than two or
three calls a day, Chair.

ADV KATE HOFMEYR: And is that so over the period from about the

8th of June where you sign the term sheet to the submission on the 4th of July?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: What justification did she give you for it each time?

MS PHUMEZA NHANTSI: Each time she said there are the BNP is not making profit. There was a point where she said maybe I'm of the view that BNP is profiting for this. BNP is not profiting, BNP is taking the cost filtering the cost from Grissag and they can't incur losses because
10 they are assisting a SAE. So he said those are the direct cost that are coming from Grissag AG.

ADV KATE HOFMEYR: Ms Nhantsi, we now know from the evidence of Mr van der Merwe that that is false, correct?

MS PHUMEZA NHANTSI: Correct Chair.

ADV KATE HOFMEYR: We were at the memorandum of incorporation because I wanted to probe with you what you knew in relation to this vote relative to what it would take to carry it. And I directed you to page 152, that's a part of the memorandum of incorporation that was operative at the time.

20 **MS PHUMEZA NHANTSI:** Yes Chair.

ADV KATE HOFMEYR: You'll see just above the middle of that page it deals with 13.11.7 and its setting out there the votes that each director will have. It reads that each director shall have one vote on a matter before the Board and say for otherwise provided in this MOI I a majority of the votes cast on a resolution is sufficient to support to approve that

resolution. Do you see that?

MS PHUMEZA NHANTSI: Yes, I do.

ADV KATE HOFMEYR: So my question to you was, it's relevant how many votes are cast because it's the majority of the votes cast that will carry a resolution. Do you see that?

MS PHUMEZA NHANTSI: I see that now, Chair.

ADV KATE HOFMEYR: Were you aware of that at the time?

MS PHUMEZA NHANTSI: No Chair, I was aware of the fact for the Board resolution to be approved or to go ahead, we have to get the
10 majority and the majority would be 50 plus 1.

ADV KATE HOFMEYR: So out of a Board of five it would be three, correct?

MS PHUMEZA NHANTSI: Yes Chair, yes.

ADV KATE HOFMEYR: But you now see that was relevant was how many votes were cast, correct?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: So if only three people vote for example the resolution will be approved if only two of those three approve it, correct?

20 **MS PHUMEZA NHANTSI:** Correct, that's the understanding.

ADV KATE HOFMEYR: So you didn't seek clarity as to the position that the Board members would take on whether they'd abstain or vote, correct?

MS PHUMEZA NHANTSI: No, I said the sense that I got was from Ms Yakhe. So in my calculation I was like me, it's Mr Zwane and Yakhe.

So even if Dr Thambi goes the other way, it will not go ahead.

ADV KATE HOFMEYR: As it happened you didn't vote though, did you?

MS PHUMEZA NHANTSI: At the time I was not aware that to abstaining does not count, Chair.

ADV KATE HOFMEYR: But you did not vote against this recommendation to the Board, did you?

MS PHUMEZA NHANTSI: No, I did not I abstained.

ADV KATE HOFMEYR: Right. And Dr Thambi abstained.

MS PHUMEZA NHANTSI: Yes.

10 **ADV KATE HOFMEYR:** You made a correction to your statement because in your statement you said that Ms Kwinana voted against it but you wanted to change it to the fact that she abstained. Is that correct?

MS PHUMEZA NHANTSI: Correct, it was a typo.

ADV KATE HOFMEYR: As I have it she did actually vote against it. I can take you to that resolution if it's necessary. But because she voted against it and because Mr Zwane voted against it, Ms Myeni's vote did not carry the day.

MS PHUMEZA NHANTSI: Chair, I was not aware that all along even
20 through the internal disciplinary hearings, I think the company secretary said she abstained.

ADV KATE HOFMEYR: I'll find you the resolution, we do have it in the- well, her vote on it. But the force of the point Ms Nhantsi is that it's only because Mr Zwane and Ms Kwinana voted against it that it did not carry. You accept that?

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: And you didn't take a step to vote against it yourself?

MS PHUMEZA NHANTSI: Chair, as I'm saying at the point in time I calculated, my understanding at the time was we are five Board members and if three vote against it doesn't go ahead.

ADV KATE HOFMEYR: Well, you didn't have guarantees as to the other votes, did you?

MS PHUMEZA NHANTSI: I did not guarantees but I got a sense for Ms
10 Kwinana.

ADV KATE HOFMEYR: Why not just vote against it Ms Nhantsi because then you would have had a definite one vote against.

MS PHUMEZA NHANTSI: Yes chair, this is the mistake that I made Chair. As I'm saying at chances I were very busy because one of the other things that was keeping me awake at night was the liquidity crisis at SAA where I had to have engagement with the suppliers and negotiate with the suppliers because we didn't have enough money to pay them and all that. So I'm sure in that process and in that craziness if you allow me to say so, I then forgot to vote.

20 **CHAIRPERSON:** You mean to vote against?

MS PHUMEZA NHANTSI: To vote against, Chair. Yes.

CHAIRPERSON: But did you forget with the appreciation that voting against at that particular significance compared to abstaining or are you simply saying you didn't appreciate whatever distinction there might be in terms of the effect of abstaining and voting against?

MS PHUMEZA NHANTSI: In fact sir, to be honest I though abstaining and voting against is the same way.

CHAIRPERSON: Would amount to the same thing.

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Ms Nhantsi, let me just give you the record of Ms Kwinana's decision. You'll find it in Ms Stimple's bundle B, so it's DD1B.

MS PHUMEZA NHANTSI: Yes.

ADV KATE HOFMEYR: And you'll find it at page 560.

10 **MS PHUMEZA NHANTSI:** I'm there Chair.

ADV KATE HOFMEYR: You'll see it's an email from Ms Kwinana to amongst others the members of the Board including yourself and it reads, dear Madu(?), the cancellation fee should not have been included as part of the bid. Sorry, should have been included as part of the bid and the amount being included as one of the factors to considering evaluation and adjudication and be compared with all other bids which may with this inclusion be cheaper. In view of this I do not support this round-robin. Do you see that?

MS PHUMEZA NHANTSI: I see it Chair.

20 **ADV KATE HOFMEYR:** Of course her reference to the fact that there would have been comparison with the other bids is of course not correct, is it?

MS PHUMEZA NHANTSI: Yes Chair because ... (intervenes)

ADV KATE HOFMEYR: There were no other bids.

MS PHUMEZA NHANTSI: Yes, this was confinement.

ADV KATE HOFMEYR: And if we go back one page to 559, you see Ms Myeni's approval there.

MS PHUMEZA NHANTSI: Yes Chair.

ADV KATE HOFMEYR: Again, giving some credence to your assumptions about the drop in the cancelation fee amount because Ms Myeni's email reads, dear Madu, does this need Board approval? If so, I approve it. Regards. Do you accept that she is querying whether Board approval is require at all for a cancellation fee of less than 50 million?

10 **MS PHUMEZA NHANTSI:** Yes Chair, and as i said I'm not surprised because immediately after it went through the round-robin, she called me to say why is this going to the Board.

CHAIRPERSON: As a matter of interest I see that in that email at 559, under her name is written Executive Chairperson. Was she an Executive Chairperson?

MS PHUMEZA NHANTSI: Not to my knowledge.

CHAIRPERSON: I thought she was non Executive?

ADV KATE HOFMEYR: She was non Executive.

MS PHUMEZA NHANTSI: She was non actually, not to my knowledge.

20 She was non Executive.

CHAIRPERSON: Oh, but it's written Executive Chairperson there. Okay alright.

ADV KATE HOFMEYR: Chair, we are at 6 o'clock, I only have two further topics but they do traverse some of the last aspects of Ms Nhantsi's statement. Particular other dealings in her time with Ms

Myeni and then some final concluding remarks that I require Ms Nhantsi's comment on. My suggestion is that we take that up briefly tomorrow morning.

CHAIRPERSON: Yes, I think we should adjourn now. I think I may have made you believe that we could start early this week but I have reason to say tomorrow let's start at the normal time.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: And how much more time do you think we need with her?

10 **ADV KATE HOFMEYR:** No more than half an hour.

CHAIRPERSON: No more than half an hour. No, that's fine. Will you be able to come back tomorrow, Ms Nhantsi?

MS PHUMEZA NHANTSI: Yes Chair, definitely. What time is the normal time?

CHAIRPERSON: It's 10 o'clock.

MS PHUMEZA NHANTSI: Okay Chair.

CHAIRPERSON: Yes okay. We are going to adjourn for the day and we'll start at 10 o'clock tomorrow morning. We adjourn.

INQUIRY ADJOURNS TO 19 JUNE 2019